FIDELITY NATIONAL TITLE INSURANCE COMPANY

17911 VON KARMAN AVENUE, SUITE 300
IRVINE, CALIFORNIA 92616

NAIC COMPANY #51586

MARKET CONDUCT EXAMINATION REPORT

AS OF JUNE 30, 2000

Duane G. Rogers, Esq.
&
J. Reuben Hamlin, Esq.
Independent Market Conduct Examiners
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FIDELITY NATIONAL TITLE INSURANCE COMPANY

179111 VON KARMAN AVENUE, SUITE 300
IRVINE, CALIFORNIA, 92614

MARKET CONDUCT EXAMINATION REPORT as of June 30, 2000

Prepared by
Duane G. Rogers, Esq.
&
J. Reuben Hamlin, Esq.

Independent Contract Examiners

March 14, 2001

The Honorable William J. Kirven III
Commissioner of Insurance
State of Colorado
1560 Broadway Suite 850
Denver, Colorado 80202

Commissioner:

In accordance with §§ 10-1-203 and 10-3-1106, C.R.S., an examination of selected rating, underwriting, claims and general business practices of the title insurance business of Fidelity National Title Insurance Company has been conducted. The Company's underwriting records were examined at its affiliates Colorado State Administrative Offices located at 1875 Lawrence Street, suite 1200, Denver, Colorado, 80202. The Company's claims records were examined at its home office located at 17911 Von Karman Avenue, Suite 300, Irvine, California, 92614.

The examination covered a one-year period from July 1, 1999 to June 30, 2000.

A report of the examination Fidelity National Title Insurance Company is herein respectfully submitted.

Duane G. Rogers, Esq. &
J. Reuben Hamlin, Esq.
Independent Market Conduct Examiners

MARKET CONDUCT
EXAMINATION REPORT
OF
FIDELITY NATIONAL TITLE INSURANCE COMPANY

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COMPANY PROFILE

Fidelity National Title Insurance Company, hereinafter referred to as "the Company", is a wholly owned subsidiary Fidelity National Financial, Inc. The Company is authorized to write title insurance coverage in Colorado and was first licensed in the State of Colorado on October 15, 1982.

The Company, a California Corporation, is the successor by merger between Fidelity National Title Insurance Company, a Nebraska Corporation and the surviving corporation, Fidelity National Title Insurance Company of Arizona. The merger was effective December 1, 1982, at which time the surviving Company adopted its present name, Fidelity National Title Insurance Company.

The Company is engaged in the title insurance business on a nationwide basis and, is licensed as a title insurer in 40 states, and the District of Columbia. The Company's ultimate parent Fidelity National Financial, Inc., is a holding company for a group of title insurers including Alamo Title Insurance, Chicago Title Insurance Company, Chicago Title Insurance. Company of Oregon, Fidelity National Title Insurance of New York, Nations Title Insurance of New York, Inc., National Title Insurance of New York, Inc., Security Union Title Insurance Company, and Ticor Title Insurance Company

Incorporated in California, The Company maintains it's national headquarters in Irvine, California, however, its also maintains executive offices in Santa Barbara, California. The Company provides title insurance nationwide through a network of direct operations an independent agency force. Underwriting review and Claims adjustment are conducted through various divisional offices located throughout the United States. Colorado underwriting and claim operations are managed through the Company's Irvine, California Office.

For the fiscal year 1999 the Company reported $8,502,000 in direct premiums in Colorado representing 3.6% of the total Colorado title insurance market. The Company's direct premium earned were $8,363,311.[1]

[1] Figure representing direct written and earned premiums provided by the Company as reported in its Schedule T of Form 9 of the Company's annual statement. Figure representing market share provided by the Company.

PURPOSE AND SCOPE OF EXAMINATION

This market conduct report was prepared by independent examiners contracting with the Colorado Division of Insurance for the purpose of auditing certain business practices of insurers licensed to conduct the business of insurance in the State of Colorado. This procedure is in accordance with Colorado Insurance Law § 10-1-204, C.R.S., which empowers the Commissioner to supplement his resources to conduct market conduct exams. The findings in this report, including all work product developed in the production of this report, are the sole property of the Colorado Division of Insurance.

The market conduct examination covered by this report was performed to assist the Colorado Commissioner of Insurance to meet certain statutory charges by determining Company compliance with the Colorado Insurance Code and generally accepted operating principles. Additionally, findings of a market conduct examination serve as an aid to the Division of Insurance's early warning system. The intent of the information contained in this report is to serve only those purposes.

This examination was governed by, and performed in accordance with, procedures developed by the Colorado Division of Insurance based on the National Association of Insurance Commissioners Model Procedures. In reviewing material for this report the examiners relied primarily on records and material maintained by the Company and its agents. The examination covers one calendar year of the Company's operations, from July 1, 1999 to June 30, 2000.

File sampling was based on review of systematically selected samples of underwriting and claims files by category. Sample sizes were chosen based on guidance from procedures developed by the National Association of Insurance Commissioners. Upon review of each file, any concerns or discrepancies were noted on comment forms. These comment forms were delivered to the Company for review. Once the Company was advised of a finding contained in a comment form, the Company had the opportunity to respond. For each finding the Company was requested to agree, disagree or otherwise justify the Company's noted action. At the conclusion of each sample, the Company was provided a summary of the findings for that sample. The report of the examination is, in general, a report by exception. Therefore, much of the material reviewed will not be contained in this written report, as reference to any practices, procedures, or files that manifested no improprieties were omitted.

An error tolerance level of plus or minus $10.00 was allowed in most cases where monetary values were involved, however, in cases where monetary values were generated by computer or system procedure a $0 tolerance level was applied in order to identify possible system errors.

Additionally, a $0 tolerance level was applied in instances were there appeared to be a consistent pattern of deviation from the Company's rates on file with the Colorado Division of Insurance.

This report contains information regarding exceptions to the Colorado Insurance Code. The examination included review of the following six Company operations:

1. Complaint Handling.
2. Agent Licensing.
3. Underwriting Practices.
4. Rate Application.
5. Claims Settlement Practices.
6. Financial Reporting

All unacceptable or non-complying practices may not have been discovered throughout the course of this examination. Additionally, findings may not be material to all areas which would serve to assist the Commissioner. Failure to identify or criticize specific Company practices does not constitute acceptance by the Colorado Division of Insurance of such practices. This report should not be construed to endorse or discredit any insurance company or insurance product. Statutory cites and regulation references are as of the period under examination unless otherwise noted.

Examination findings may result in administrative action by the Division of Insurance.

EXAMINATION REPORT SUMMARY

The examination resulted in a total of fifteen (15) issues, arising from the Company's apparent noncompliance with Colorado statutes and regulations concerning all title insurers authorized to transact title insurance business in Colorado. These fifteen (15) issues fell into five of the seven categories of Company operations as follows:

Complaint Handling Procedures:

In the area of complaint handling, one (1) compliance issue is addressed in this report. This issue arose from Colorado statutes and regulations which require insurers offering coverage in Colorado to adopt and implement procedures for addressing and responding to consumer complaints and requires all insurers to maintain a complete complaint register. With regard to this issue, it is recommended that the Company review its complaint handling procedures and amend those procedures to assure future compliance with applicable Colorado laws.

Underwriting Practices:

In the area of underwriting, six (6) compliance issues are addressed in this report. These issues arose from Colorado statutory and regulatory requirements which must be followed whenever title policies are issued in Colorado. The incidence of noncompliance in the area of underwriting exhibits a frequency range between 6% and 51%. With regard to these underwriting practices, it is recommended that the Company review its underwriting procedures and make the necessary changes to assure future compliance with applicable statutes and regulations as to all six (6) issues.

Rating Practices and Application:

In the area of rating, four (4) compliance issues are addressed in this report. These issues arose from Colorado statutory and regulatory requirements which must be followed whenever title policies are issued in Colorado and whenever title insurers or the insurer's agents conduct real estate or loan closing and/or settlement service for Colorado consumers. The incidence of noncompliance in the area of rating demonstrates an error frequency between 6% and 81%. With regard to the four (4) compliance issues addressed in relation to the Company's rating practices, it is recommended that the Company review its rating manuals and procedures and make the necessary changes to assure future compliance with applicable statutes and regulations as to all four (4) issues.

Claims Settlement Practices:

In the area of claim settlement practices, three (3) compliance issues are addressed in this report. These issues arise from Colorado statutory and regulatory requirements dealing with the fair and equitable settlement of claims, payment of claims checks, maintenance of records, timeliness of payments, accuracy of claim payment calculations, and delay of claims. The incidence of noncompliance in the area of claims practices shows a frequency range of error between 7% and 46%. Concerning the three (3) compliance issues encompassing Company claims practices, it is recommended that the Company review its claims handling procedures and make the necessary changes to assure future compliance with applicable statutes and regulations as to all three (3) issues.

Financial Reporting:

In the area of financial reporting and other miscellaneous compliance issues, one compliance issue is addressed in this report. The issue arose from specific Colorado statutory and regulatory requirements requiring title insurers to file certain financial data and to provide annual statistical justification and data to support title insurance rates used in Colorado. With regard to this issue, it is recommended that the Company review its annual filing procedures and make the necessary changes to assure future compliance with applicable statutes and regulations.

PERTINENT FACTUAL FINDINGS

Market Conduct Examination Report
of
FIDELITY NATIONAL TITLE
INSURANCE COMPANY

PERTINENT FACTUAL FINDINGS

Relating to

COMPLAINT HANDLING PROCEDURES

Issue A: Failure to maintain minimum standards in a record of written complaints.

Section 10-3-1104(1), C.R.S., requires all insurance companies operating in Colorado to provide for complaint handling procedures and provides that:

> (i) Failure to maintain complaint handling procedures: Failing of any insurer to maintain a complete record of all the complaints which it has received since the date of its last examination. This record shall indicate the total number of complaints, their classification by line of insurance, the nature of each complaint, the disposition of these complaints, and the time it took to process each complaint. For purposes of this paragraph (I), "complaint" shall mean any written communication primarily expressing a grievance.

3 CCR 702-6(6-2-1) Attachment A promulgated pursuant to the authority of §§ 10-1-109, 10-3-1110, and 10-11-118, C.R.S., sets forth the minimum information required to be maintained by insurance companies in their respective complaint registers as follows:

Attachment A. Minimum Information Required in Complaint Record

Column A	Column B		Column C	Column D	Column E	Column F	Column G	Column H
Company Identification Number	Function Code	Reason Code	Line Type	Company Disposition after Complaint Receipt	Date Received	Date Closed	Insurance Department Complaint	State of Origin

Examination of the Company's complaint record effective for the period under examination demonstrated the Company was not in compliance with all of the requirements of 3 CCR 702-6(6-2-1). Specifically, Colorado Insurance Regulation 3 CCR 702-6(6-2-1), under Column A, requires complaint entries to be listed by a Company Identification Number. This refers to the identification number of the complaint and must include the license number or other means of identifying any licensee of the Insurance Division (such as agent staff adjuster, or independent adjuster) that may have been involved in the complaint. The Company's complaint log did not include a Column A identification number as such is required and defined by 3 CCR 702-6(6-2-1).

Under Column B, the regulation requires complaints to be classified by Company function (i.e. underwriting, marketing and sales, claims, policyholder services, ect.). Although the Company's complaint log contained a column a column entitled the "nature of the complaint" or reason column, the Company's complaint log did not contain a Column B function code as such is identified and defined by 3 CCR 702-6(6-2-1).

Under Column C, the regulation requires company complaint registers to indicate the line type. Complaints are to be classified according to the line of insurance involved. Although title insurers are only authorized to write title insurance in Colorado and, therefore, all complaints

would most likely be classified as title insurance line type complaints, the Company's complaint register should have included a column indicating the line type, however, the Company's complaint log did not.

Under Column F, the regulation requires the Company to post or record the date the complaint was closed, however, the Company's complaint log did not contain a column specifying the closing date of complaints.

Under Column G, the regulation requires complaints to be classified to indicate if the origin of the complaint was from the Colorado Division of Insurance or whether the complaint was received otherwise. The Company's complaint record did not include a column specifying whether complaints originated with the Division or not.

Under Column H, the regulation specifically requires that "[t]he complaint record shall note the state from which the complaint originated. Ordinarily this will be the state of the residence of the complainant." The Company's Complaint Log, however, did not contain a column indicating the origin of the complaint.

Recommendation #1:

Within 30 days, the Company should demonstrate why it should not be considered in violation of the requirements set forth in 3 CCR 702-6(6-2-1) adopted pursuant to the authority of §§ 10-1-109, 10-3-1110, and 10-11-118, and 10-4-4, C.R.S. In the event the Company is unable to provide such documentation, it should be required to provide evidence that it has amended its complaint register to include the omitted information and that the Company's complaint register is in compliance with the minimal requirements of the Colorado regulation.

PERTINENT FACTUAL FINDINGS

for

UNDERWRITING PRACTICES

Issue B: Failure to provide written notification to prospective insureds of the Company's general requirements for the deletion of the standard exception or exclusion to coverage related to unfiled mechanic's or materialman's liens and/or the availability of mandatory GAP coverage.

Colorado Insurance Regulation 3 CCR 702-3 (3-5-1)(VII), adopted in part pursuant to the authority granted under §§10-1-109 and 10-3-1110, C.R.S., states in pertinent parts:

> (C) Every title entity shall be responsible for all matters which appear of record prior to the time of recording whenever the title entity conducts the closing and is responsible for recording or filing of legal documents resulting from the transaction which was closed.
>
> (L) Each title entity shall notify in writing every prospective insured in an owner's title insurance policy for a single family residence (including a condominium or townhouse unit) (i) of that title entity's general requirements for the deletion of an exception or exclusion to coverage relating to unfiled mechanics or materialman's liens, except when said coverage or insurance is extended to the insured under the terms of the policy and (ii) of the circumstances described in Paragraph C of Article VII of these Regulations, under which circumstances the title insurer is responsible for all matters which appear of record prior to the time of recording (commonly referred to as "Gap Coverage").

The Company's standard printed schedule B policy exceptions contain the following general exclusionary language for all unfiled mechanic or materialman's liens:

> This policy does not insure against loss or damage (and the Company will not pay costs, attorney's fees or expenses) which arise by reason of:
>
> 4 Any lien, or right to a lien, for services, labor or material heretofore or hereinafter furnished, imposed by law and not shown by the public records.

A review of the Company's underwriting and rating manuals demonstrated that, during the period under examination, the Company offered coverage for unfiled mechanic's and materialman's liens. Such coverage was available through the Company via deletion of the printed exceptions, an extended coverage endorsement, or by using Company endorsement 110.1 or 110.2 which insured over particular named exceptions. In addition, a review of Company underwriting and escrow files demonstrated that, during the period under examination, the Company conducted several closings in coordination with the issuance of title insurance policies insuring title to single family dwellings. As indicated by the Regulation cited above, whenever a title insurer or its agent conducts a closing in relation to a title policy issued and is responsible for recording the documents resulting from the real estate transaction,

Colorado Insurance Regulation 3 CCR 702-3(3-5-1)(VII)(L) mandates coverage for all matters appearing of record prior to the time of recording (GAP coverage).

The following sample demonstrated that, although the Company offered coverage for unfiled mechanic's and materialman's liens and was often responsible for the regulatory mandated GAP coverage, the Company failed to make the appropriate written disclosures regarding its general requirements for unfiled mechanic's or materialman's lien coverage and/or failed to provide notice of the existence of GAP coverage where such notices were required:

TITLE POLICIES ISSUED
July 1, 1999 through June 30, 2000

Population	Sample Size	Number of Exceptions	Percentage to Sample
14,355	100	37	37%

An examination of 100 systematically selected underwriting and accompanying escrow files, representing .7% of all title policies issued by the Company in Colorado during the period under examination, showed 37 instances (37% of the sample) wherein the Company issued title insurance policies providing owner's coverage for risks associated with the title transfer of single family residences, condominiums or townhouses in Colorado. Each policy excepted coverage for unfiled mechanics or materialman's liens and/or GAP coverage. Coverage for unfiled mechanic's or materialman's liens was available through the Company by endorsement and, as the Company or its agent conducted the closing in each instance, GAP coverage was mandated by law. However, in each instance the Company failed to provide the insured with the requisite written notice regarding the availability and/or prerequisites of such coverages as required by 3 CCR 702-3 (3-5-1)(VII)(L).

More specifically, in 2 of the 37 instances, the Company failed to provide the insured with both notice of the existence of Gap coverage and Mechanic's Lien Coverage as mandated by Colorado law. In the remaining 35 instances the Company was unable to provide documentation that it provided prospective insureds with the requisite notice regarding the he Company's general requirements for the deletion of the Company's standard exception for unfiled mechanic's liens.

Recommendation #2:

Within 30 days, the Company should demonstrate why it should not be considered in violation of §§10-3-1104(1)(a) and (1)(a)(I), C.R.S., and 3 CCR 702-3 (3-5-1)(VII)(C) and (L). In the event the Company is unable to provide such documentation, it should be required to provide evidence that it has amended its underwriting guidelines, agency agreements or other Company procedures necessary to implement the requisite change so that those procedures and guidelines include a requirement that will assure the Company will provide prospective insureds with written notification of the Company's general requirements for the deletion of the

Company's general exception or exclusion to coverage for unfiled mechanic's liens and GAP coverage.

Issue C: Misrepresenting the benefits, advantages, conditions or terms of insurance policies by omitting applicable endorsements.

Section 10-3-1104(1), C.R.S. defines certain unfair methods of competition and unfair or deceptive acts or practices in the business of insurance:

(a) Misrepresentations and false advertising of insurance policies: Making, issuing, circulating, or causing to be made, issued, or circulated, any estimate, circular, statement, sales presentation, omission, or comparison which:

(I) Misrepresents the benefits, advantages, conditions, or terms of any insurance policy; . . .

A review of the following sample demonstrated that, whenever the Company issued a title insurance policy in Colorado during the period under examination, the Company failed to identify, itemize or list policy endorsements in a declarations page or otherwise include such information within the written terms of title insurance policies issued.

TITLE POLICIES ISSUED
July 1, 1999 through June 30, 2000

Population	Sample Size	Number of Exceptions	Percentage to Sample
14,355	100	39	39%

An examination of 100 systematically selected underwriting and accompanying escrow files, representing .70% of all title policies issued by the Company in Colorado during the period under examination, showed 39 instances (39% of the sample) wherein the Company omitted applicable endorsements. In all 39 instances the Company issued title insurance policies without itemizing the inclusive endorsements on a policy declaration page or otherwise disclosing such information within the written terms of the policy issued.

Furthermore, a review of the Company's policy forms demonstrated that only 1 of the 7 most common title insurance and title guarantee policy forms used by the Company in Colorado during the period under examination contained a declarations page or policy jacket which included a section for itemizing endorsements. Specifically, the policy jacket for the ALTA Short Form Residential Loan Policy, issued by the Company to lenders in coordination with permanent loans secured by residential property of one to four family dwellings, contained a checklist to indicate endorsements incorporated into the policy issued.

Other than the short form discussed above, the Company's only method of notifying prospective insureds of the endorsements requested by an insured for inclusion in the prospective title insurance policy was to provide a statement of charges at the top of the respective insured/applicant's initial commitment papers.

Upon issuing the title insurance policy the terms of the last update of the commitment were incorporated into the title policy, however, the Company omitted the listing of inclusive endorsements that appeared within the terms of the original commitment papers. Therefore, upon issuance of the policy, any endorsements or riders were not listed or otherwise itemized within the terms of the title policy issued. In addition, the only indication that an endorsement or rider amended a particular policy was application of a Company practice requiring the issuing agent to place a copy of the endorsement or rider behind the Company's copy of the title policy maintained in the underwriting file. The endorsements were not otherwise "attached" to the policy and the pages of the policy were not numbered (i.e. 1 of 1) to identify the length of the policy or otherwise identify the existence of any endorsements or riders.

Recommendation #3:

Within 30 days, the Company should demonstrate why it should not be considered in violation of §10-3-1104(1)(a)(I), C.R.S. In the event the Company is unable to provide such documentation, it should be required to provide evidence that it has amended its policy forms and endorsements and underwriting guidelines and procedures and any other requisite Company operations so that all title policies issued by the Company incorporate a listing of any endorsements and/or riders on the policy declaration page or within the terms of the policy as to all future policies issued by the Company.

Issue D: Failure to obtain written closing instructions from all necessary parties when providing closing and/or settlement services for Colorado consumers.

Sections 10-3-1104(1)(a) and (1)(a)(I), C.R.S. define an unfair or deceptive trade practice in the business of insurance as:

> (a) Misrepresentations and false advertising of insurance policies: Making, issuing, circulating, or causing to be made, issued, or circulated, any estimate, circular, statement, sales presentation, omission, or comparison which:
>
> (I) Misrepresents the benefits, advantages, conditions, or terms of any insurance policy.

Colorado Insurance Regulation 3 CCR 702-3 (3-5-1)(VII), adopted in part pursuant to the authority granted under §§10-1-109 and 10-3-1110, C.R.S., states:

> (G) No title entity shall provide closing and settlement services without receiving written instructions from all necessary parties.

The following sample demonstrated that, in some instances, the Company or its agent provided closing and/or settlement service in Colorado during the period under examination without obtaining the requisite written closing instructions from all necessary parties.

TITLE POLICIES ISSUED
July 1, 1999 through June 30, 2000

Population	Sample Size	Number of Exceptions	Percentage to Sample
14,355	100	11	11%

An examination of 100 systematically selected underwriting and accompanying escrow files, representing .70% of all title policies issued by the Company in Colorado during the period under examination, showed 11 instances (11% of the sample) wherein the Company or its agent provided closing and/or settlement services for Colorado consumers without receiving written closing instructions from all necessary parties.

The initial list of policies issued by the Company in Colorado during the period under examination did not include limited liability title insurance policies issued by the Company during the examination period. Based on this information, the examiners requested the Company to provide a list of limited liability policies issued by the Company from July 1, 1999 to June 30, 2000. The examiners systematically selected 50 limited liability policies from that list for further review. The examiners' findings pertinent to the Company's failure to obtain written closing instructions from all necessary parties in compliance with 3 CCR 702-3(3-5-1) were as follows:

LIMITED LIABILITY TITLE POLICIES ISSUED
July 1, 1998 through June 30, 1999

Population	Sample Size	Number of Exceptions	Percentage to Sample
1,258	50	3	6%

An examination of 50 systematically selected underwriting files, representing 3.97% of all limited liability title policies issued by the Company in Colorado during the period under examination, showed 3 instances (6% of the sample) wherein the Company or its agent provided closing and/or settlement services for Colorado consumers without receiving written closing instructions from all necessary parties.

Recommendation #4:

Within 30 days, the Company should demonstrate why it should not be considered in violation of §§10-3-1104(1)(a) and (1)(a)(I), C.R.S., and 3 CCR 702-3 (3-5-1)(VII)(G). In the event the Company is unable to provide such documentation, it should be required to provide evidence that it has amended its underwriting guidelines, agency agreements or other Company operations necessary to assure that the Company and its agents will obtain written instructions from all necessary parties whenever the Company or its agents perform closing and settlement services in Colorado.

Issue E: Failure to follow Company underwriting procedures and/or guidelines and/or unfairly discriminatory underwriting practices.

Section 10-3-1104(1)(f)(II), C.R.S. defines an unfair business practice in the business of insurance as:

> (II) Making or permitting any unfair discrimination between individuals of the same class or between neighborhoods within a municipality and of essentially the same hazard in the amount of premium, policy fees, or rates charged for any policy or contract of insurance, or in the benefits payable thereunder, or in any of the terms or conditions of such contract, or in any other manner whatever;

As stated in the heading above, this issue is comprised of two components. The first arose from the Company's failure to follow its own underwriting procedures, guidelines, standards, and/or practices resulting in disparate treatment between similarly situated insureds. The second component was comprised of situations wherein the Company engaged in unfairly discriminatory underwriting practices. These findings are grouped by category as follows:

Failing to Follow Company Underwriting Procedures and/or Guidelines:

TITLE POLICIES ISSUED
July 1, 1999 through June 30, 2000

Population	Sample Size	Number of Exceptions	Percentage to Sample
14,355	100	42	51%

An examination of 100 systematically selected underwriting and accompanying escrow files, representing .70% of all title policies issued by the Company in Colorado during the period under examination showed 42 exceptions (42% of the sample) wherein the Company failed to follow its own underwriting guidelines and/or engaged in unfairly discriminatory underwriting practices.

Many of the files reviewed contained more than one underwriting error, however, to maintain sample integrity, each file was considered as a singular exception regardless of the total errors contained in the file. Thus, the exception frequency reported above was 42%, however the 100 files reviewed contained a total of 50 errors wherein the company issued title polices without following the Company's underwriting guidelines and/or engaged in discriminatory underwriting practices. Forty-two (42) errors resulted from the issuing entity's failure to delete the standard exceptions from owner's coverage issued simultaneously with commensurate lender's coverage in which the standard exceptions had been deleted in compliance with the Company's underwriting manual.

The remaining error resulted from the Company's failure to adhere to its underwriting standards when issuing a lender's policy with limits of liability in excess of the value of the subject land. These findings were as follows:

The Company's underwriting manual states:

> General Exceptions, Owner's Policies Ordinary One to Four Family Residences
>
> It is our policy to delete or omit GENERAL EXCEPTIONS 1 to 4 inclusive on any owner's policy where the land is improved with a structure intended for ordinary residential use by not more than four families if we are simultaneously issuing a loan policy involving the same land in which we do not show these exceptions.

Fidelity National Title Insurance Company, *Underwriting Deskbook for Fidelity National Financial, Inc.*, Policy and Commitment Issuance-General Exceptions, p. 165.

Forty-two (42) of the fifty-nine (59) files contained errors wherein the file was a simultaneous issue of both a lender and owner's title policy for the same interest in land, insuring title to a one to four family residence. Although the standard exceptions were deleted from the lender's coverage in these instances, the insureds under the owners' policies were not afforded such coverage and no effort or offer to delete such was tendered or endeavored in compliance with the Company's Underwriting Guidelines cited above.

In one (1) other instance the Company issued a lender's policy with liability amounts in excess of the value of the subject land in derogation of the Company's underwriting/rating manual. Specifically, during the period the Company's rating/underwriting manual contained certain rules regarding loan policies insuring deeds of trust with loan amounts in excess of the value of the land. These rules stated:

> Loan policies cannot be issued for an amount less than the full principal debt, except, when the land covered in the policy represents only part of the security of the loan(s), then the policy shall be written in the amount of the value of such land or the amount of the loan, whichever is lesser. A policy however, can be issued for a reasonable amount in excess of the principal debt to cover interest, foreclosure costs, ect., not to exceed 150% of the principle debt
>
> Title Insurance may be required in some cases and under conditions for which no charge has been provided for in this manual, such as where specific land is not the primary security, but is, in fact, additional security in connection with other primary security. The total loan amount may be in excess of the value of the land upon which a

Deed of Trust is so placed. In such situations, upon a letter of request (which states the circumstances) from the lender, the policy may be written for an amount based on the value of the real property. The charge for the policy shall be the rate applicable to the type of policy and the amount of insurance.

Fidelity National Title Insurance Company, FIDELITY NATIONAL TITLE INSURANCE COMPANY FEES & RULES GOVERNING ISSUANCE OF TITLE COMPANY COMMITMENTS, POLICIES, AND ENDORSEMENTS IN THE STATE OF COLORADO, §III, Articles 3.5 and 3.17 at pp. 17-18, 21 (ed. effective 11/29/99).

In this instance a lender's policy was issued with liability in excess of the full value of the real estate transaction. The liability under the owner's policy was $290,000.00 while the amount of liability under the lender's policy was $1,221,470.00. Therefore, the lender's policy was issued with liability in excess of 150% of the lesser amount of the full value of the land or the principal loan in violation of the Company's rule cited above.

Unfairly Discriminatory Underwriting Practices:

LIMITED LIABILITY TITLE POLICIES ISSUED
July 1, 1998 through June 30, 1999

Population	Sample Size	Number of Exceptions	Percentage to Sample
1,258	50	7	14%

An examination of 50 systematically selected underwriting files, representing 3.97% of all limited liability title policies issued by the Company in Colorado during the period under examination, showed 7instances (14% of the sample) wherein the Company or its agent engaged in unfairly discriminatory underwriting practices when issuing Lender's Abbreviated Guarantee (FLAG) title insurance policies. Specifically, the Company's 1999 Base rate filing, effective in Colorado during the period under examination, contained the following regarding the premium charges for FLAG policies:

LENDERS ABBREVIATED GUARANTEE (FLAG)

A limited loan service which is issued as the following charge:

1. $150.00 – List the record owners and holders of any deeds of trusts and mortgages maximum liability $100,000.

2. $90.00-Larimer County only – List the record owners and holders of any deeds of trust and mortgages maximum liability $100,000.

Fidelity National Title Insurance Company, 1999 BASE RATE FILING, Section 6.13 at pp. 31-32(ed. effective 1/29/99).

The Company's filed rate for FLAG policies cited above indicated that the charge for a FLAG policy during the period under examination was $150.00 with a maximum liability of $100,000.00. In these seven (7) instances FLAG policies were issued insuring title for property loans ranging between $10,300.00 and $36,728.00, however, the policies were issued with a liability of $100,000.00.

Furthermore, a review of the remaining sample of forty-three (43) limited liability policies demonstrated that, although the filed rate for a FLAG policy was a set value of $150.00 for liability from $1.00 to $100,000.00, the Company's practice was to issue FLAG policies with liability equivalent to the actual amount or value of the insured loan. In these instances, however, Company was in derogation of the Company's usual practice in that the Company issued these seven (7) FLAGs with liability amounts that exceeded the actual risk by monetary values ranging between of $89,700.00 and $63,272.00.

Recommendation #5:

Within 30 days, the Company should demonstrate why it should not be considered in violation of §10-3-1104(1)(f)(II), C.R.S. In the event the Company is unable to provide such documentation, it should be required to provide evidence demonstrating that the Company has either amended its underwriting rules to comport with the Company's practices or provide the Division with information demonstrating the Company has implemented procedures which will assure that all title policies issued by the Company will be issued in Compliance with written Company underwriting rules, procedures and/or standards.

With regard to the discrepant treatment of insureds resulting from the Company's failure to uniformly issue Lender's Abbreviated Guarantees with appropriate limits of liability, the Company should be required to adopt, implement and distribute underwriting and/or rating guidelines to provide clarification to Company representative and agents regarding issuance of such policies. The Company should provide the Colorado Division of Insurance with satisfactory evidence demonstrating the adopted or amended guidelines have been distributed to the appropriated Company representatives and agents.

Issue F: Issuing title insurance policies without obtaining a certificate of taxes due.

Section 10-11-122, C.R.S. provides:

> (3) Before issuing any title insurance policy, unless the proposed insured provides written instructions to the contrary, a title insurance agent or title insurance company shall obtain a certificate of taxes due or other equivalent documentation from the county treasurer or the county treasurer's authorized agent.

TITLE POLICIES ISSUED
July 1, 1999 through June 30, 2000

Population	Sample Size	Number of Exceptions	Percentage to Sample
14,355	100	3	3%

An examination of 100 systematically selected underwriting and accompanying escrow files, representing .70% of all title policies issued by the Company in Colorado during the period under examination, showed 3 instances (3% of the sample) wherein the Company issued title insurance policies without first obtaining a certificate of taxes due or other equivalent documentation. None of the files reported contained information demonstrating that the respective insured had provided written instructions waiving the requirement.

The initial list of policies issued by the Company in Colorado during the period under examination did not include limited liability title insurance policies issued by the Company during the examination period. Based on this information, the examiners requested the Company to provide a list of limited liability policies issued by the Company from July 1, 1999 to June 30, 2000. The examiners systematically selected 50 limited liability policies from that list for further review. The examiners' findings pertinent to the Company's failure to obtain a certificate of taxes due prior to issuing title insurance policies in compliance with §10-11-122(3), C.R.S. were as follows:

LIMITED LIABILITY TITLE POLICIES ISSUED
July 1, 1999 through June 30, 2000

Population	Sample Size	Number of Exceptions	Percentage to Sample
1,258	50	16	32%

An examination of 50 systematically selected underwriting files, representing 11% of all limited liability title policies issued by the Company in Colorado during the period under examination, showed 16 instances (32% of the sample) wherein the Company issued title

insurance policies without first obtaining a certificate of taxes due or other equivalent documentation. None of the files reported contained information demonstrating that the respective insured had provided written instructions waiving the requirement.

Recommendation #6:

Within 30 days, the Company should demonstrate why it should not be considered in violation of §10-11-122(3), C.R.S. In the event the Company is unable to provide such documentation, it should be required to provide evidence demonstrating that the Company has adopted and implemented procedures which will assure that, whenever the Company issues a title policy in Colorado, the Company or its agent will obtain a certificate of taxes due or other equivalent documentation for the subject property of which title is to be insured.

Issue G: Using a name or title of an insurance policy or class of insurance that misrepresents the true nature there of and/or making, issuing, and/or circulating an estimate, circular, statement and or sales presentation which misrepresents the benefits, advantages, conditions, and/or terms of title insurance policies.

Pertinent Sections of 10-3-1104(1)(a) and (b), C.R.S. defines certain unfair business practices in the business of insurance as:

(a) Misrepresentations and false advertising of insurance policies: Making, issuing, circulating, or causing to be made, issued, or circulated, any estimate, circular, statement, sales presentation, omission, or comparison which:

(I) Misrepresents the benefits, advantages, conditions, or terms of any insurance policy; or . . .

(V) Uses any name or title of any insurance policy or class of insurance policies misrepresenting the true nature thereof. . .

(b)False information and advertising generally: Making, publishing, disseminating, circulating, or placing before the public, or causing, directly or indirectly, to be made, published, disseminated, circulated, or placed before the public, in a newspaper, magazine, or other publication, or in the form of a notice, circular, pamphlet, letter, or poster, or over any radio or television station, or in any other way, an advertisement, announcement, or statement containing any assertion, representation, or statement with respect to the business of insurance, or with respect to any person in the conduct of his insurance business, which is untrue, deceptive, or misleading. . .

TITLE POLICIES ISSUED
July 1, 1999 through June 30, 2000

Population	Sample Size	Number of Exceptions	Percentage to Sample
14,355	100	33	33%

An examination of 100 systematically selected underwriting and accompanying escrow files, representing .70% of all title policies issued by the Company in Colorado during the period under examination, showed 33 instances (33% of the sample) wherein the Company used a name or title of an insurance policy or class of insurance that misrepresented the true nature thereof and/or made, issued, and/or circulated an estimate, circular, statement and or sales presentation which misrepresents the benefits, advantages, conditions, and/or terms of a title insurance policy.

Twenty-six (26) of the thirty-three (33) files identified above contained misrepresentations wherein the Company issued Commitments indicating certain coverage would be afforded to

insureds under owner's title insurance coverage, however, in these twenty-six (26) instances such coverage was never provided. The Commitments for these twenty-six (26) title policies contained the following language:

> NOTE: UPON COMPLETION OF THE REQUIREMENTS SET FORTH UNDER SCHEDULE B – SECTION 1 OF THIS COMMITMENT ITEMS 1 THROUGH 5, OF SCHEDULE B – SECTION 2 WILL NOT APPEAR ON THE OWNER'S POLICY TO BE ISSUED HEREUNDER.

In these instances the Commitments indicted that, provided certain requirements were met, all of the standard preprinted exceptions would be deleted from Schedule B Section 2 of the title policy issued. Although the requirements were satisfied in these twenty-six (26) files, the cited deletion of all the standard pre-printed exceptions or Owner's Extended Coverage (OEC) was not afforded to the insured under the respective owner's policy. Instead, the issuing agent issued a Form 130 endorsement providing the insured Owner's Extra Protection Coverage (OEP) for an additional premium charge of $30.00. This practice was misleading in that issuance of the Form 130 Endorsement, although providing the insured under an owner's policy some additional or "extra protection", is not commensurate with the deletion of standard preprinted exceptions 1-5, and the coverage under the Form 130 endorsement is not as far-reaching or complete as is deletion of the standard exceptions (OEC).

The problem was further compounded in these twenty-six (26) instances in that the issuing entities policy transmittal letter to the insured indicated that the enclosed owner's policy included a Form 130 endorsement and was also an "Owner's Extended Policy". The transmittal letter provided:

> Enclosed please find the following in regard to the ABOVE referenced property:
>
> (X) Original Extended Owner's Policy
> (X) Form No. 130
> (X) Form No.
> (X) Edorsment
> ( )
> ( )
>
> The policy is a valuable document, which should always be retained in your files.

Considering the traditional industry standard of what constitutes Owner's Extended Coverage (OEC), this statement was misleading. Unless otherwise specified or limited in the Commitment, the industry standard of what constitutes Owner's Extra Coverage (OEC) is generally a deletion of the standard preprinted exceptions from Schedule B Section 2 of an

owner's title insurance policy. The Form 130 endorsement is not commensurate with the industry standard for OEC and any reference or representation by the Company that the Form 130 endorsement effectuates the same coverage or coverages as deletion of the standard exceptions (OEC) or is otherwise commensurate with such is misleading.

Based on the above, the Company's practice of indicating to its insureds that, provided certain requirements were met, the standard preprinted exceptions 1-5 of schedule B would be deleted and, upon completion of those requirements, issuing a more restrictive Form 130 Endorsement in lieu of deleting said exceptions, appears to be misleading as that term is defined by 10-3-1104(1)(a)(I), C.R.S. Moreover, the Company's apparent misrepresentation to these twenty-six (26) insureds that the respective owner's policy issued was an "Extended Owner's Policy" was not accurate of the true nature of the policy issued.

In three (3) of the thirty-three (33) reported files the Commitment for the underlying owner's title policy appeared misleading. Specifically, in these three (3) instances the title insurance Commitment indicated that, when the policies where issued, the owner's coverage would include Owner's Extended Coverage, the deletion of preprinted exceptions 1-5 of Schedule B Section 2 of the policy. Similarly, although the requirements were satisfied in these three (3) files, deletion of the pre-printed exceptions or Owner's Extended Coverage (OEC) was not provided to the insured under the respective owner's policy when the policy was issued.

Instead of deleting the standard exceptions, the issuing agent issued a Form 130 endorsement providing the insured Owner's Extra Protection Coverage. This practice of issuing the Form 130 Endorsement in lieu of deleting the standard exceptions as represented by the Commitment appears misleading. Specifically, the Form 130 endorsement, although providing the insured under an owner's policy some additional or "extra protection", is not commensurate with Owner's Extended Coverage, the deletion of standard preprinted exceptions 1-5, and the coverage under the Form 130 endorsement is not as far-reaching or complete as is deletion of the standard exceptions. The Company's apparent misrepresentation in these three (3) instances is not in compliance with the provisions of §10-3-1104 et seq., C.R.S., cited above.

In four (4) other instances owner's policies were issued using the standard ALTA Form 10/21/87 policy form. In each of these instances, however, the policy jacket that was delivered to the insured was the policy jacket for an ALTA Form 10/17/92. This was misleading in that the coverages provided by the two policy forms were not the same.[2]

The inherent problems stemming from the practice of commingling these policy forms were demonstrated during the examiners' review of open Company claims. Specifically, a review of

[2] Between 1987 & 1992 ALTA revised the owner's form twice, once in 1990 and again in 1992. The main difference in coverage between the 1987 and 1992 policies is that the 1992 policy form contains a creditors rights exclusion limited to and subject to instances wherein the creditors rights arise from the failure to timely record the instrument of transfer.

50 systematically selected claim files demonstrated that the Company's practice when initially reviewing claims was to obtain a copy of the original policy from the issuing agent. In most cases, the agent only forwarded a copy of Schedules A and B of the policy and any endorsements thereto, however, the agents rarely forwarded a copy of the policy jacket which contained many of the terms and conditions of the respective policy. In these four (4) instances, had a claim arose, notwithstanding the fact that the insured's policy contained the terms and conditions of an ALTA Form 10/17/92 policy, the Claims Manger handling the claim would have processed the claim using the terms and conditions of a 1987 policy jacket as a reference for coverage.

Considering the above, the practice of issuing a ALTA 1987 policy in a 1992 policy jacket appeared misleading as defined by §10-3-1104(1)(a)(I), C.R.S.

Recommendation #7:

Within 30 days, the Company should demonstrate why it should not be considered in violation of §10-3-1104(1)(a) and (b), C.R.S. In the event the Company is unable to provide such documentation, it should be required to provide evidence demonstrating that the Company has amended the referenced practices to assure future compliance with the requirements of the cited statutes.

PERTINENT FACTUAL FINDINGS

for

RATING PRACTICES AND APPLICATION

RATING SECTION 1

Pertinent Factual Findings for Schedule of Rates, Fees & Charges

TITLE INSURANCE POLICIES.

Issue H: Failure to provide adequate financial and statistical data of past and prospective loss and expense experience to justify certain title insurance premium rates.

Section 10-4-401, C.R.S., provides:

> (b) Type II kinds of insurance, regulated by open competition between insurers, including fire, casualty, inland marine, title insurance, and all other kinds of insurance subject to this part 4 and not specified in paragraph (a) of this subsection (3), including the expense and profit components of workers' compensation insurance, which shall be subject to all the provisions of this part 4 except for sections 10-4-405 and 10-4-406. Concurrent with the effective date of new rates, type II insurers shall file rating data, as provided in section 10-4-403, with the commissioner.

Section 10-4-403, C.R.S., provides:

> (1) Rates shall not be excessive, inadequate, or unfairly discriminatory.

Colorado Insurance Regulation 3 CCR 702-3(3-5-1)(VII)), adopted in part to the authority granted under §10-4-404, C.R.S. provides:

> K. Each title entity on an annual basis shall provide to the Commissioner of Insurance sufficient financial data (and statistical data if requested by the Commissioner) for the Commissioner to determine if said title entities' rates as filed in the title entities' schedule of rates are inadequate, excessive, or unfairly discriminatory in accordance with Part 4 of Article 4 of Title 10, C.R.S.
>
> Each title entity shall utilize the income, expense and balance sheet forms, standard worksheets and instructions contained in the attachments labeled "Colorado Uniform Financial Reporting Plan" and "Colorado Agent's Income and Expense Report" designated as attachments A & B and incorporated herein by reference. Reproduction by insurers is authorized, as supplies will not be provided by the Colorado Division of Insurance.

BASIC SUBDIVIDER RATE:

The Company's 1999 base rate manual effective in Colorado during the period under examination contained the following volume discount for developers and contractors:

> **BASIC SUBDIVISION RATE**
>
> **CHARGE:**
>
> 50% of the basic schedule of rates.
>
> Larimer County only.
> 35% of the Basic Schedule of Rates
>
> These rates are applicable only when three or more policies are to be issued insuring three or more different purchasers.

Fidelity National Title Insurance Company, 1999 BASE RATE FILING, Section 5.1 at p. 27(ed. effective 1/29/99).

Pursuant to 3 CCR 702-3(3-5-1(VI)(K)), adopted under the authority granted by §10-4-404, C.R.S. the examiners requested Company representatives to produce the Company's 1999 and 2000 3 CCR 702-3(3-5-1) Attachment A filings containing financial and statistical data to demonstrate the above cited rate and/or rating rule was not inadequate, excessive, or unfairly discriminatory as those terms are defined under 10-4-401 et seq., C.R.S. Since the Company was unable to produce the requested filings, the Company was asked to produce a prospective justification of the subdivider rate in accordance with the criteria established under the statutes cited above.

The Company's response to the examiners' request for statistical and financial justification of the Company's subdivider discount rate did not contain a sufficient justification of the subdivider rate as the response did not satisfy the requirements of §10-4-401 et seq., C.R.S. Specifically, the Company's response did not contain pertinent supporting financial or statistical data. In addition, the Company's response did not consider past and prospective loss and expense experience and the response did not identify or explain how a reasonable profit provision was incorporated into the development of builder/developer subdivider discount rates.

ADDITIONAL CHARGES FOR DUPLICATE POLICIES:

The Company's 1999 base rate manual effective in Colorado during the period under examination contained the following fee the Company charged whenever an insured requested a duplicate, replacement or a copy of the insured's title policy:

DUPLICATE POLICIES

> Duplicate policies in which no additional insurance is given may be furnished to the insured at the discretion of the company for a service charge of $20.00 each. The duplicate policy must contain a statement: 'This policy is issued in lieu of lost policy number _____, which is hereby cancelled.'

Fidelity National Title Insurance Company, 1999 BASE RATE FILING, Section 1.8 at p. 4(ed. effective 1/29/99).

Pursuant to 3 CCR 702-3(3-5-1(VI)(K)), adopted under the authority granted by §10-4-404, C.R.S. the examiners requested Company representatives to produce the Company's 1999 and 2000 3 CCR 702-3(3-5-1) Attachment A filings containing financial and statistical data demonstrating the above cited rate and/or rating rule was not inadequate, excessive, or unfairly discriminatory as those terms are defined under 10-4-401 et seq., C.R.S. Since the Company was unable to produce the requested filings, the examiners requested Company representatives to provide a prospective justification of the charge in accordance with the criteria established under the statutes cited above.

The Company's response to the examiners' request for statistical and financial justification of the duplicate policy charge did not contain a sufficient justification of the cited rate as the response did not satisfy the requirements of §10-4-401 et seq., C.R.S. Specifically, the Company's response did not contain pertinent supporting financial or statistical data. In addition, the response did not consider past and prospective loss and expense experience and the response did not identify or explain how a reasonable profit provision was incorporated into the cited rate.

COUNTY-BY-COUNTY RATE DEVIATIONS FOR CONCURRENT LENDER POLICIES.

The Company's rate filings effective during the period under examination stated that the premium charge for the simultaneous issue of lender's policy when such coverage was issued in conjunction with a qualifying owner's policy was a flat rate of $100.00 in 51 Colorado Counties[3]. *See*, Section 3.1(B), GENERAL RULES FOR LENDER'S INSURANCE, Rate Filing effective 1/29/99. Notwithstanding the fact that the Company had a filed lender's simultaneous issue rate of $100.00 effective in almost every Colorado County, the filed rate for the simultaneous issue of a lender's policy in Larimer, Summit, Eagle, and Park Counties was $75.00 during the period under examination.

[3] The 51 counties included -Adams, Alamosa, Arapahoe, Archuleta, Baca, Bent, Boulder, Chaffe, Cheyenne, Clear Creek, Conejos, Costilla, Crowley, Delores, Delta, Denver, Douglas, El Paso, Fremont, Garfield, Gilpin, Grand, Gunnison, Hinsdale, Huerfano, Jackson, Jefferson, Kiowa, Kit Carson, Lake, La Plata, Las Animas, Lincoln, Mesa, Mineral, Moffat, Montezuma, Montrose, Otero, Ouray, Phillips, Pitkin, Prowers, Rio Blanco, Rio Grande, Saguache, San Juan, San Miguel, Sedgwick, Teller, and Washington.

Pursuant to 3 CCR 702-3(3-5-1(VI)(K)), adopted under the authority granted by §10-4-404, C.R.S. the examiners requested Company representatives to produce the Company's 1999 and 2000 3 CCR 702-3(3-5-1) Attachment A filings containing financial and statistical data to demonstrate the above cited rate and/or rating rule was not inadequate, excessive, or unfairly discriminatory as those terms are defined under 10-4-401 et seq., C.R.S. Since the Company was unable to produce the filings, the examiners requested Company representatives to provide a prospective justification of the cited rates in accordance with the criteria established under the statutes cited above.

The Company's response to the examiners' request for statistical and financial justification of the county-by-county fluctuation of concurrent lender policy premium rates was not sufficient justification of the cited rate and did not satisfy the requirements of §10-4-401 et seq., C.R.S. Specifically, the responses did not contain pertinent supporting financial or statistical data. In addition, the Company's responses did not consider past and prospective loss and expense experience and the response did not identify or explain how a reasonable profit provision was incorporated into the development of the county-by-county rate variation for simultaneous issue rates.

COUNTY-BY-COUNTY RATE DEVIATIONS FOR LIMITED LIABILITY POLICIES.

The Company's rating manual contained the following regarding certain limited liability policies offered by the Company in Colorado during the period under examination:

> LENDERS ABBREVIATED GUARANTEE (FLAG)
>
> A limited loan service which is issued as the following charge:
>
> 3. $150.00 – List the record owners and holders of any deeds of trusts and mortgages maximum liability $100,000.
>
> 4. $90.00-Larimer County only – List the record owners and holders of any deeds of trust and mortgages maximum liability $100,000.

Fidelity National Title Insurance Company, 1999 BASE RATE FILING, Section 6.13 at pp. 31-32(ed. effective 1/29/99).

Pursuant to 3 CCR 702-3(3-5-1(VI)(K)), adopted under the authority granted by §10-4-404, C.R.S. the examiners requested Company representatives to produce the Company's 1999 and 2000 3 CCR 702-3(3-5-1) Attachment A filings containing financial and statistical data to demonstrate the above cited rate and/or rating rule was not inadequate, excessive, or unfairly discriminatory as those terms are defined under 10-4-401 et seq., C.R.S. Since the Company was unable to produce the filings, the examiners requested Company representatives to provide

a prospective justification of the cited rates in accordance with the criteria established under the statutes cited above.

The examiners requested the Company to identify the increased risk factors associated with FLAG policies issued in all Colorado Counties other than Larimer County, specifically justifying why the premium charge for a FLAG policy was 67% higher in all Colorado Counties other than Larimer County.

The Company's response to the examiners' request for statistical and financial justification of the county-by-county rate fluctuation was not a sufficient justification of the cited rate and did not satisfy the requirements of §10-4-401 et seq., C.R.S. Specifically, the responses did not contain pertinent supporting financial or statistical data. In addition, the Company's responses did not consider past and prospective loss and expense experience and the response did not identify or explain how a reasonable profit provision was incorporated into the development of the county-by-county rate variation for FLAG policies.

COUNTY-BY-COUNTY RATE DEVIATIONS FOR SHORT TERM REISSUE RATES:

During the period under examination the Company's filed rates contemplated a "short term reissue" discount for all title insurance policies issued by the Company within a fixed period of prior coverage. Although the Company's short term reissue rate was available throughout Colorado, the term of eligibility and discount percentage varied by county. Specifically, the Company's rate manual rule provided:

> When an Owner's policy is ordered within satisfactory evidence that a prior owner's, loan, or leasehold policy was issued within five (5) years, the charge will be 50% of the charge set forth in the Basic Schedule of Rates computed at the dollar amount of the prior policy, the increase, if any, to be computed in accordance with the charges set forth in the Basic Schedule of Rates in the applicable brackets.
>
> A. El Paso County only
>
> When an Owner's policy is ordered within five years of the original policy date of a prior owner's, loan, or leasehold policy the charge will be 55% of the amount set forth in the Basic Schedule of Rates computed at the dollar amount of the prior policy, the increase, if any, to be computed in accordance with the charges set forth in the Basic Schedule of Rates in the applicable brackets.
>
> B. Summit County only

When an Owner's policy is ordered within (5) years of the original policy date of a prior owner's, loan, or leasehold policy the charge will be the following percentage of the amount set forth in the Schedule of Rates computed at the dollar amount of the prior policy, the increase, if any, to be computed in accordance with the charges set forth in the Basic Schedule of Rates in the applicable brackets.

0 to 48 months	50%	of Basic Rate
49 to 60 months	75%	of Basic Rate

C. Larimer County only

When an Owner's policy is ordered within (5) years of the original policy date of a prior owner's, loan, or leasehold policy the charge will be the following percentage of the amount set forth in the Schedule of Rates computed at the dollar amount of the prior policy, the increase, if any, to be computed in accordance with the charges set forth in the Basic Schedule of Rates in the applicable brackets.

0 to 48 months	50%	of Basic Rate
49 to 60 months	90%	of Basic Rate

D. Pitkin County only

When an Owner's policy is ordered within (5) years of the original policy date of a prior owner's, loan, or leasehold policy the charge will be 50% of the amount set forth in the Basic Schedule of Rates.

Fidelity National Title Insurance Company, 1999 BASE RATE FILING, Section 2.4 at p. 10(ed. effective 1/29/99).

In addition to the above, the Company's manual contained the following short-term reissue rate applicable to lender's title insurance coverage:

A. When a Loan policy is ordered within satisfactory evidence that a prior owner's, loan, or leasehold policy was issued within five (5) years, the charge will be 50% of the charge set forth in the Basic Schedule of Rates computed at the dollar amount of the prior policy, the increase, if any, to be computed in accordance with the charges set forth in the Basic Schedule of Rates in the applicable brackets (all counties except El Paso)

B. When a Loan policy is ordered within five years of the original policy date of a prior owner's, loan, or leasehold policy the charge will be fifty five percent (55%) of the amount set forth in the Basic Schedule of Rates computed at the dollar amount of the prior policy, the increase, if any, to be computed in accordance with the charges set forth in the Basic Schedule of Rates in the applicable brackets (El Paso County only).

Fidelity National Title Insurance Company, 1999 BASE RATE FILING, Section 3.4 at p. 17(ed. effective 1/29/99).

Pursuant to 3 CCR 702-3(3-5-1(VI)(K)), adopted under the authority granted by §10-4-404, C.R.S. the examiners requested Company representatives to produce the Company's 1999 and 2000 3 CCR 702-3(3-5-1) Attachment A filings containing financial and statistical data to demonstrate the above cited rate and/or rating rule was not inadequate, excessive, or unfairly discriminatory as those terms are defined under 10-4-401 et seq., C.R.S. Since the Company was unable to produce the filings, the examiners requested Company representatives to provide a prospective justification of the cited rates in accordance with the criteria established under the statutes cited above.

Specifically, the examiners requested Company representatives to identify the increased risk factors associated with the reissue rate for coverage in those Colorado Counties where the reissue discount factor was less than 50% and where such discount was not available at 50% for the five year term available in most Colorado Counties. It was requested that the Company's response include sufficient financial and statistical data to demonstrate the above cited rates and/or rating rules were not inadequate, excessive, or unfairly discriminatory in accordance with 10-4-401 et seq., C.R.S.

Again, considering the overall rationale for reissue rates, the Company was asked to identify the increased risk factors associated with lender's title policies issued in El Paso county where the reissue discount allowance was 5% less than any other Colorado county specifically indicating why the differential treatment of insureds under lender policies in El Paso County was not an excessive, unfairly discriminatory rate as defined by §§10-4-401 et seq.

The Company's response to the examiners' request for statistical and financial justification of the cited reissue discounts was not sufficient justification of the rating schemes and did not satisfy the requirements of §10-4-401 et seq., C.R.S. Specifically, the responses did not contain pertinent supporting financial or statistical data. In addition, the Company's responses did not consider past and prospective loss and expense experience and the responses did not identify or explain how a reasonable profit provision was incorporated into the development of the cited county-by-county rate variations.

COUNTY-BY-COUNTY RATE FLUCTUATIONS FOR LEASEHOLD REISSUE RATES:

The Company's rating manual contains the following rating scheme regarding short-term reissue discounts for leasehold policies:

> SHORT TERM RATE:
>
> When an Owner's policy for leasehold coverage is ordered with satisfactory evidence that a prior owner's, loan or leasehold policy was issued within five years, the charge will be the following percentage of the charge set forth in the Basic Schedule of Rates computed at the dollar amount of the prior policy. The increase, if any, to be computed in accordance with the charges set forth in the Basic Schedule of Rates in the applicable brackets (all counties except El Paso County only).
>
> 0 to 2 years…….50%
> 2 to 4 years…….75%
>
> When an Owner's policy for leasehold coverage is ordered within five years of the original policy date of a prior owner's, loan or leasehold policy the charge will be fifty-five (55) percent of the charge set forth in the Basic Schedule of Rates computed at the dollar amount of the prior policy. (El Paso County only).

Fidelity National Title Insurance Company, 1999 BASE RATE FILING, Section 4.4 at p. 23(ed. effective 1/29/99).

Pursuant to 3 CCR 702-3(3-5-1(VI)(K)), adopted under the authority granted by §10-4-404, C.R.S. the examiners requested Company representatives to produce the Company's 1999 and 2000 3 CCR 702-3(3-5-1) Attachment A filings containing financial and statistical data to demonstrate the above cited rate and/or rating rule was not inadequate, excessive, or unfairly discriminatory as those terms are defined under 10-4-401 et seq., C.R.S. Since the Company was unable to produce the filings, the examiners requested Company representatives to provide a prospective justification of the cited rates in accordance with the criteria established under the statutes cited above.

The Company's response to the examiners' request for statistical and financial justification of the cited county-by-county rate variation was not sufficient justification of the rate and did not satisfy the requirements of §10-4-401 et seq., C.R.S. Specifically, the Company's response did not contain pertinent supporting financial or statistical data. In addition, the Company's response did not consider past and prospective loss and expense experience and the response did not identify or explain how a reasonable profit provision was incorporated into the development of the cited county-by-county leasehold rate variation.

COUNTY-BY-COUNTY RATE FLUCTUATIONS FOR SUBDIVIDER DISCOUNTS:

The Company's rating manual contained the following county-by-county rates discount rate variations for subdivider rates:

CHARGE:

50% of the basic schedule of rates.

Larimer County only.
35% of the Basic Schedule of Rates

These rates are applicable only when three or more policies are to be issued insuring three or more different purchasers.

Fidelity National Title Insurance Company, 1999 BASE RATE FILING, Section 5.1 at p. 27(ed. effective 1/29/99).

Pursuant to 3 CCR 702-3(3-5-1(VI)(K)), adopted under the authority granted by §10-4-404, C.R.S. the examiners requested Company representatives to produce the Company's 1999 and 2000 3 CCR 702-3(3-5-1) Attachment A filings containing financial and statistical data to demonstrate the above cited rate and/or rating rule was not inadequate, excessive, or unfairly discriminatory as those terms are defined under 10-4-401 et seq., C.R.S. Since the Company was unable to produce the filings, the examiners requested Company representatives to provide a prospective justification of the cited rates in accordance with the criteria established under the statutes cited above.

Moreover, considering the Company's overall rationale for a subdivider's discount rate, the examiners requested the Company to identify the increased risk factors associated with title coverage in all Colorado Counties other than Larimer County, specifically identifying why the subdivider rate was 15% lower in all Colorado Counties other than Larimer County.

The Company's response to the examiners' request for statistical and financial justification of the cited county-by-county rate variation was not sufficient justification of the rate and did not satisfy the requirements of §10-4-401 et seq., C.R.S. Specifically, the Company's response did not contain pertinent supporting financial or statistical data. In addition, the Company's response did not consider past and prospective loss and expense experience and the response did not identify or explain how a reasonable profit provision was incorporated into the development of the cited county-by-county subdivider rate variation.

COUNTY-BY-COUNTY RATE FLUCTUATIONS; GENERALLY:

In addition to the Company rating rules discussed above, a review of statewide rate filings made by the Company and or its Colorado agents, raised certain questions regarding whether the Company's statewide rating scheme complied with the requirements of Colorado law. Specifically, the examiners questioned whether variances in rate charges among different Colorado counties was unfairly discriminatory under Colorado law or whether the county-by-county rating scheme in the business of title insurance resulted in excessive rates.

For instance, the Company's rate filings effective during the period under examination for Boulder and Denver county results in different rates charged in each county. The premium charge for a basic ALTA owner's policy in Denver County was $753.00 on a 100,000 home, or $7.53 per thousand. Each additional thousand dollars of coverage for coverage between $100,000 and $500,000 carried an additional premium charge of $1.95 per thousand.

The premium charges for the same coverage in Boulder County was $555.00 on a 100,000 home, or $5.55 per thousand. As in the case of Denver County, each additional thousand dollars of coverage over and above the 100,000 but less than $500,000 carried an additional premium charge of $1.95 per thousand.

Pursuant to 3 CCR 702-3(3-5-1(VI)(K)), adopted under the authority granted by §10-4-404, C.R.S. the examiners requested Company representatives to produce the Company's 1999 and 2000 3 CCR 702-3(3-5-1) Attachment A filings containing financial and statistical data demonstrating the above cited rates and rating rules were not inadequate, excessive, or unfairly discriminatory in accordance with 10-4-401 et seq., C.R.S. The Company was unable to produce a copy of the reports so the examiners requested Company representatives to produce financial and statistical justification of the rate in question.

Specifically, the examiners requested the Company to identify factors supporting disparate premium charges among several Colorado Counties. The Company was informed that its response should be a detailed answer describing past and prospective loss and expense experience. The Company was also asked to demonstrate how a reasonable profit provision is incorporated into the Company's premium charges for title coverage, specifically indicating how the Company's investment income offsets the reasonable profit provision.

Furthermore, considering the significant reduction in premium charges for the first 100,000 in coverage in Boulder County as compared to Denver County, the Company's response was to address and justify why the per unit premium charge for coverage over 100,000 was not reduced in Boulder County commensurate with the reduction for the first $100,000 specifically addressing why the filed rate provided for a premium reduction for the first $100,000 of coverage in Boulder County, however, the premium charge for each $1,000 of coverage between $100,000 and $500,000 was the same in Boulder County as it was in Denver County where the first $100,000 of coverage was 36% higher than Boulder County.

The Company's response to the examiners' request for statistical and financial justification of the county-by-county rate fluctuations was not sufficient justification of the cited rates and did not satisfy the requirements of §10-4-401 et seq., C.R.S. Specifically, the responses did not contain pertinent supporting financial or statistical data. In addition, the Company's responses did not consider past and prospective loss and expense experience and the response did not identify or explain how a reasonable profit provision was incorporated into the development of county-by-county rate fluctuations.

VARIOUS ENTITY SPECIFIC DISCOUNTS:

The Company's rating manual contained the following regarding a governmental entity The Company's rating manual contained the following regarding reduced premium charges for governmental entities:

> GOVERNMENTAL RATE-EL PASO COUNTY ONLY
>
> A charge of 50% of the Basic Rate may be charged as to owner's insurance properly paid for by a governmental, federal, state, municipal and/or affiliated agency on a 1-4 family residence.

Fidelity National Title Insurance Company, 1999 BASE RATE FILING, Section 1.13 at p. 5(ed. effective 1/29/99).

In addition to the above, the Company's rating manual contained the following discount for eleemosynary institutions and churches:

> CHURCHES OR CHARITABLE NON-PROFIT ORGANIZATIONS:
>
> A charge of 50% of the basic schedule of rates may be charged as to owner's and/or lender's insurance properly paid for by insured churches, charitable or like eleemosynary non-profit organizations on property dedicated to church or charitable use within the normal activities for which such entities were intended. The Basic Rate, with one discount, applies on policies issued on all other property.

Fidelity National Title Insurance Company, 1999 BASE RATE FILING, Section 1.12 at p. 5(ed. effective 1/29/99).

Pursuant to 3 CCR 702-3(3-5-1(VI)(K)), adopted under the authority granted by §10-4-404, C.R.S. the examiners requested Company representatives to produce the Company's 1999 and 2000 3 CCR 702-3(3-5-1) Attachment A filings containing financial and statistical data demonstrating the above cited rates and rating rules were not inadequate, excessive, or unfairly

discriminatory in accordance with 10-4-401 et seq., C.R.S. The Company was unable to produce a copy of the reports so the examiners requested Company representatives to produce financial and statistical justification of the rate in question.

The Company's response to the examiners' request for statistical and financial justification of the two cited entity specific discounts were not sufficient justifications of the cited rates and did not satisfy the requirements of §10-4-401 et seq., C.R.S. Specifically, the responses did not contain pertinent supporting financial or statistical data. In addition, the Company's responses did not consider past and prospective loss and expense experience and the response did not identify or explain how a reasonable profit provision was incorporated into the development of the cited entity specific discounts.

Recommendation #8:

Within 30 days, the Company should demonstrate why it should not be considered in violation of §10-4-403(1), C.R.S., and 3 CCR 702-3 (3-5-1)(VI)(K) as applicable to the findings addressed in the text above. In the event the Company is unable to provide such documentation, it should be required to provide the Colorado Division of Insurance with adequate financial and statistical data of past and prospective loss and expense experience to justify the cited Company premium rates, fees, and charges. The filing should specifically identify and explain how a reasonable profit provision is incorporated into the development of the Company's premium rates, fees and charges.

In addition, the Company should be required to provide written assurance that it will comply with the requirements of 3 CCR 702-3(3-5-1)(VII)(K) and submit an annual filing to the Colorado Division of Insurance of sufficient financial data (and statistical data if requested by the Commissioner) for the Commissioner to determine if said title entities' rates as filed in the title entities' schedule of rates are inadequate, excessive, or unfairly discriminatory in accordance with 10-4-401, C.R.S. et seq.

Issue I: Using rates and/or rating rules not on file with the Colorado Division of Insurance and/or misapplication of filed rates.

Section 10-4-401(3), C.R.S., provides:

> (b) Type II kinds of insurance, regulated by open competition between insurers, including fire, casualty, inland marine, title insurance, and all other kinds of insurance subject to this part 4 and not specified in paragraph (a) of this subsection (3), including the expense and profit components of workers' compensation insurance, which shall be subject to all the provisions of this part 4 except for sections 10-4-405 and 10-4-406. Concurrent with the effective date of new rates, type II insurers shall file rating data, as provided in section 10-4-403, with the commissioner.

Additionally, Section 10-3-1104(1)(f), C.R.S., defines unfair discrimination as:

> (II) Making or permitting any unfair discrimination between individuals of the same class or between neighborhoods within a municipality and of essentially the same hazard in the amount of premium, policy fees, or rates, charged for any policy or contract of insurance, or in the benefits payable thereunder, or in any of the terms or conditions of such contract, or in any other manner whatever;

Consistent with the provision of §10-4-401 et seq., 3 CCR 702-3(3-5-1) requires all title insurers offering coverage in Colorado to comply with Colorado laws and regulations regarding rates and rating practices. Specifically, the regulation provides in pertinent parts:

> IV. SCHEDULE OF RATES, FEES AND CHARGES--TITLE INSURANCE POLICIES
>
> A. Every title insurer shall adopt, print and make available to the public a schedule of rates, fees and charges for regularly issued title insurance policies including endorsements, guarantees and other forms of insurance coverages, together with the forms applicable to such fees. . .
>
> . . .G. Such schedule must be filed with the Commissioner in accordance with Part 4 of Article 4, Title 10, C.R.S., and Section 118, Article 11, Title 10, C.R.S., and any applicable regulation or regulations on rates, rate filings, rating rules, classification or statistical plans. . . .
>
> . . .J. No title entity shall quote any rate, fee or make any charge for a title policy to any person which is more or less than that currently available to others for the same type of title policy in a like amount, covering property in the same

> county and involving the same factors as set forth in its then currently effective schedule of rates, fees and charges. . . .
>
> . . .V. SCHEDULE OF FEES AND CHARGES--CLOSING AND SETTLEMENT SERVICES
>
> A. Every title entity shall adopt, print, and make available to the public a schedule of fees and charges for regularly rendered closing and settlement services. . . .
>
> . . .F. Such schedule must be filed with the Commissioner in accordance with Section 118, Article 11, Title 10, C.R.S., and Part 4 of Article 4, Title 10, C.R.S., and any applicable regulation or regulations on rates, rate filings, rating rules, classification or statistical plans. . . .
>
> . . .I. No title entity shall quote any fee or make any charge for closing and settlement services to any person which is less than that currently available to others for the same type of closing and settlement services in a like amount, covering property in the same county and involving the same factors, as set forth in its then currently effective schedule of fees and charges.

Colorado Insurance Regulation 3 CCR 702-5(5-1-10)(III)(B)(1) and (4) provide:

> (1) Every property and casualty insurer, including workers' compensation and title insurers, are required to file insurance rates, minimum premiums, schedule of rates, rating plans, dividend plans, individual risk modification plans, deductible plans, rating classifications, territories, rating rules, rate manuals and every modification of any of the foregoing which it proposes to use. Such filings must state the proposed effective date thereof, and indicate the character and extent of the coverage contemplated.
>
> (4) Each rate filing must be accompanied by rating data, as specified in § 10-4-403, C.R.S., including at a minimum past and prospective loss experience, loss costs or pure premium rates, expense provisions, and reasonable provisions for underwriting profits and contingencies, considering investment income from unearned premium reserves, reserves from incurred losses, and reserves from incurred but not reported losses

TITLE POLICIES ISSUED
July 1, 1999 through June 30, 2000

Population	Sample Size	Number of Exceptions	Percentage to Sample
14,355	100	76	76%

An examination of 100 systematically selected underwriting and accompanying escrow files, representing .70% of all title policies issued by the Company in Colorado during the period under examination, showed 76 exceptions (76% of the sample) wherein the Company issued title insurance policies using rates and/or rating rules not on file with the Division of Insurance and/or failed to use rates on file with the Colorado Division of Insurance when issuing policies of insurance.

Many files reviewed contained more than one rating error, however, to maintain sample integrity, each file was considered as a singular exception regardless of the total errors contained in the file. Thus, the exception frequency reported above was 76%, however the 100 files reviewed contained a total of 162 premium rating errors. The following chart contains a breakdown of the findings by coverage:

Type of Coverage	Number of Errors	% to Sample (file errors)	Range of Errors
Owner's	47 errors (47 files)	47%	**Over:** $ 2.00 to $420.00 (13 errors) **Under:** $2.00 to $534.00 (34 errors)
Lender's	39 errors (38 files)	38%	**Over:** $5.00 to $405.00 (21 errors) **Under:** $1.92 to $1,109.00 (18 errors)
Endorsements	76 errors (44 files)	44%	**Over:** $5.00 to $45.00 (61 errors) **Under:** $2.60 to $35.00 (15 errors)
Total	**162 errors* (76 files)**	**76%***	**Over:** $2.00 to $420.00 (95 errors) **Under:** $1.92 to $1,109.00 (67 errors)

* Totals for files and percentages consider counting a file with multiple errors as a single exception.
** Range of error does not include rounding errors.

All 136 errors were rate miscalculation errors resulting in an additional 95 overcharges ranging between $2.00 and $420.00 and 67 undercharges ranging between $1.92 and $1,109.000.

In addition, the initial list of policies issued by the Company in Colorado during the period under examination did not include limited liability title insurance policies issued by the Company during the examination period. Based on this information, the examiners requested the Company to provide a list of limited liability policies issued by the Company from July 1, 1999 to June 30,

2000. The examiners systematically selected 50 limited liability policies from that list for further review. The examiners' findings pertinent to the Company's rating practices in regards to these limited liability policies were as follows:

LIMITED LIABILITY TITLE POLICIES ISSUED
July 1, 1999 through June 30, 2000

Population	Sample Size	Number of Exceptions	Percentage to Sample
1,258	50	3	6%

An examination of 50 systematically selected underwriting files, representing 3.97% of all limited liability title policies issued by the Company in Colorado during the period under examination, showed 3 exceptions (6% of the sample) wherein the Company issued limited liability title insurance policies using rates and/or rating rules not on file with the Division of Insurance and/or failed to use rates on file with the Colorado Division of Insurance when issuing policies of insurance.

Specifically, during the period under examination the Company had a filed flat rate of $150.00[4] for Lender's Abbreviated Guarantees (FLAGs) issued in Colorado. In one instance the Company issued a FLAG policy but failed to collect any premium charges resulting in a $150.00 undercharge. In the remaining instances the Company charged $125.00 to issue FLAG polices resulting in two (2) undercharges of $25.00 each.

Recommendation #9:

Within 30 days the Company should provide documentation demonstrating why it should not be considered in violation of §§ 10-3-1104(1)(f)(II) and 10-4-403, C.R.S., and the filing requirements of 3 CCR 702-3(3-5-1). In the event the Company is unable to provide such documentation, it should be required to provide assurances that all future policies will be issued in accordance with filed company rates and all premium charges will accurately reflect rates on file with the Colorado Division of Insurance.

The Company should also be required to perform a self-audit from June 1, 1999 to present and return any excess monies collected as determined by the self-audit. The self-audit should be performed in accordance with Colorado guidelines for self-audits.

[4] Rate effective in all counties other than El Paso where the filed rate for a FLAG was $75.00.

Issue J: Failure to maintain adequate policy records and/or other information necessary for reconstruction of the rating and/or underwriting of title policies issued by the Company.

Pursuant to the authority granted by § 10-1-109, C.R.S., Colorado Insurance Regulation 1-1-7 was adopted to assist the commissioner in carrying out market conduct examinations in accordance with Colorado law. Colorado Insurance Regulation 1-1-7 provides in pertinent parts:

B. RECORDS REQUIRED FOR MARKET CONDUCT PURPOSES

1. Every insurer/carrier or related entity licensed to do business in this state shall maintain its books, records, documents and other business records so that the insurer's/carrier's or related entity's claims, rating, underwriting, marketing, complaint, and producer licensing records are readily available to the commissioner. Unless otherwise stated within this regulation, records shall be maintained for the current calendar year plus two calendar years.

2. A policy record shall be maintained for each policy issued in this state. Policy records shall be maintained for the current policy term, plus two calendar years, unless otherwise contractually required to be retained for a longer period. Provided, however, documents from policy records no longer required to be maintained under this regulation, which are used to rate or underwrite a current policy, must be maintained in the current policy records. Policy records shall be maintained as to show clearly the policy term, basis for rating and, if terminated, return premium amounts, if any. Policy records need not be segregated from the policy records of other states so long as they are readily available to the commissioner as required under this rule. A separate copy need not be maintained in the individual policy records, provided that any data relating to that policy can be retrieved. Policy records shall include:

b. The application for each policy, if any;

c. Declaration pages, endorsements, riders, termination notices, guidelines or manuals associated with or used for the rating or underwriting of the policy. Binder(s) shall be retained if a policy was not issued; and

d. Other information necessary for reconstruction of the rating and underwriting of the policy.

TITLE POLICIES ISSUED
July 1, 1999 through June 30, 2000

Population	Sample Size	Number of Exceptions	Percentage to Sample
14,355	100	28	28%

An examination of 100 systematically selected underwriting and accompanying escrow files, representing .70% of all title policies issued by the Company in Colorado during the period under examination showed 28 exceptions (28% of the sample) wherein the Company failed to adequately document underwriting/rating files sufficient to allow the examiners to determine compliance with Colorado law.

Nineteen (19) of the 28 files were not sufficiently documented to allow the examiners to reconstruct premium rates charged and/or to determine whether the Company was in compliance with or followed its own rating rules and/or underwriting guidelines when applying certain rate discounts.

Specifically, in these Nineteen (19) instances the file reviewed did not contain a copy of an invoice, HUD-1, or other documentation demonstrating the actual charges made in connection with issuing the title policy and/or closing the transaction. One file was so poorly documented that it did not contain any information regarding the Company's basis for rating the policies contained in the file. Neither the commitments nor the copies of the policies in the file indicated the proposed or actual premium charged for any of the file policies and the file did not contain any invoices, canceled checks, or other information regarding the premium charged.

Nine (9) of the 28 files were not sufficiently documented to allow the examiners to reconstruct premium charges for endorsements issued. In these nine (9) instances the Company issued several endorsements along with the accompanying lender's and/or owner's coverage. In each instance the file was not documented to show the individual charges for each endorsement and instead showed a charge representing the sum of all endorsements issued. In all nine (9) instances the total endorsement charges did not equate with the charges calculated by examiner's and, since the files were not documented to show the individual; charges for each endorsement, the examiners were unable to verify the rate charged for each individual endorsement and/or specifically identify the mischarge. Failing to adequately document files (i.e. itemize charges) to allow the examiners to reconstruct rates is not in compliance with 3 CCR 702-1(1-1-7).[5]

One (1) of the 28 files did not contain copies of the underlying policies issued.

[5] *See also*, Issue C *supra* (misrepresenting the benefits, advantages, conditions or terms of insurance policies by omitting applicable endorsements).

Recommendation #10:

Within 30 days, the Company should provide written documentation demonstrating why it should not be considered in violation of 3 CCR 702-1(1-1-7), as authorized by §10-1-109, C.R.S. In the event the Company is unable to provide such documentation, it should be required to provide evidence demonstrating the Company has reviewed its procedures pertaining to record maintenance to ensure future compliance with the regulation.

Once the Company has reviewed those procedures, the Company should be required to demonstrate it has amended its record keeping and file maintenance practices and implemented procedures which will assure underwriting files will be maintained so each file contains declaration pages, endorsements, riders, guidelines or manuals associated with or used for the rating or underwriting title policies, and any other information necessary for reconstruction of the rating and underwriting of the policy.

RATING SECTION 2

Pertinent Factual Findings for Schedule of Rates, Fees & Charges

CLOSING & SETTLEMENT SERVICES.

Issue K: Using closing and settlement service fees and charges not on file with the Colorado Division of Insurance.

Section 10-4-401(3), C.R.S. provides:

> (b) Type II kinds of insurance, regulated by open competition between insurers, including fire, casualty, inland marine, title insurance, and all other kinds of insurance subject to this part 4 and not specified in paragraph (a) of this subsection (3), including the expense and profit components of workers' compensation insurance, which shall be subject to all the provisions of this part 4 except for sections 10-4-405 and 10-4-406. Concurrent with the effective date of new rates, type II insurers shall file rating data, as provided in section 10-4-403, with the commissioner.

Additionally, Section 10-3-1104(1)(f), C.R.S., defines unfair discrimination as:

> (II) Making or permitting any unfair discrimination between individuals of the same class or between neighborhoods within a municipality and of essentially the same hazard in the amount of premium, policy fees, or rates, charged for any policy or contract of insurance, or in the benefits payable thereunder, or in any of the terms or conditions of such contract, or in any other manner whatever;

Consistent with the provision of §10-4-401 et seq., 3 CCR 702-3(3-5-1) requires all title insurers offering coverage in Colorado to comply with Colorado laws and regulations regarding rates and rating practices. Specifically, the regulation provides in pertinent parts:

> IV. SCHEDULE OF RATES, FEES AND CHARGES--TITLE INSURANCE POLICIES
>
> A. Every title insurer shall adopt, print and make available to the public a schedule of rates, fees and charges for regularly issued title insurance policies including endorsements, guarantees and other forms of insurance coverages, together with the forms applicable to such fees. . .
>
> . . .G. Such schedule must be filed with the Commissioner in accordance with Part 4 of Article 4, Title 10, C.R.S., and Section 118, Article 11, Title 10, C.R.S., and any applicable regulation or regulations on rates, rate filings, rating rules, classification or statistical plans. . . .
>
> . . .J. No title entity shall quote any rate, fee or make any charge for a title policy to any person which is more or less than that currently available to others for the same type of title policy in a like amount, covering property in the same

> county and involving the same factors as set forth in its then currently effective schedule of rates, fees and charges. . . .
>
> . . .V. SCHEDULE OF FEES AND CHARGES--CLOSING AND SETTLEMENT SERVICES
>
> A. Every title entity shall adopt, print, and make available to the public a schedule of fees and charges for regularly rendered closing and settlement services. . . .
>
> . . .F. Such schedule must be filed with the Commissioner in accordance with Section 118, Article 11, Title 10, C.R.S., and Part 4 of Article 4, Title 10, C.R.S., and any applicable regulation or regulations on rates, rate filings, rating rules, classification or statistical plans. . . .
>
> . . .I. No title entity shall quote any fee or make any charge for closing and settlement services to any person which is less than that currently available to others for the same type of closing and settlement services in a like amount, covering property in the same county and involving the same factors, as set forth in its then currently effective schedule of fees and charges.

Colorado Insurance Regulation 3 CCR 702-5(5-1-10)(III)(B)(1) and (4) provide:

> (1) Every property and casualty insurer, including workers' compensation and title insurers, are required to file insurance rates, minimum premiums, schedule of rates, rating plans, dividend plans, individual risk modification plans, deductible plans, rating classifications, territories, rating rules, rate manuals and every modification of any of the foregoing which it proposes to use. Such filings must state the proposed effective date thereof, and indicate the character and extent of the coverage contemplated.
>
> (4) Each rate filing must be accompanied by rating data, as specified in § 10-4-403, C.R.S., including at a minimum past and prospective loss experience, loss costs or pure premium rates, expense provisions, and reasonable provisions for underwriting profits and contingencies, considering investment income from unearned premium reserves, reserves from incurred losses, and reserves from incurred but not reported losses

The following sample demonstrated that the Company conducted closing and settlement services in Colorado during the period under examination and collected unfiled rates, fees, and charges for such services and/or deviated from the filed rate when calculating or assessing such charges:

TITLE POLICIES ISSUED
July 1, 1999 through June 30, 2000

Population	Sample Size	Number of Exceptions	Percentage to Sample
14,355	100	81	81%

An examination of 100 systematically selected underwriting and accompanying escrow files, representing .70% of all title policies issued by the Company in Colorado during the period under examination showed 81 exceptions (81% of the sample) wherein the Company conducted real estate closing and settlement services in coordination with the issuance of title insurance policies and collected fees and charges for the closing and settlement services which deviated from the Company's closing and settlement services fee schedule filed with the Colorado Division of Insurance.

Many files reviewed contained more than one rating error, however, to maintain sample integrity, each file was considered as a singular exception regardless of the total errors contained in the file. Thus, the exception frequency reported above was 80%, however the 100 files reviewed contained a total of 236 closing and settlement rating errors. All rating errors fell into specific sub-categories of closing and settlement fees and charges as discussed and outlined below.

OVERCHARGES FOR MISCELLANEOUS FEES ASSOCIATED WITH REAL ESTATE & LOAN CLOSINGS CONDUCTED IN COLORADO

Tax Certificate Charges

Fifty-seven (57) of the eighty-one (81) reported files (57% of the sample) contained overcharges related to tax certificates obtained by the Company prior to issuing title policies as required by §10-11-122, C.R.S. and on behalf of insureds in conjunction with closing services performed by the closing entity. Specifically, a review of 100 underwriting files demonstrated that, during the period under examination, the Company had a practice of charging a flat rate for tax certificates obtained in compliance with §10-11-122, C.R.S. and in conjunction with closings services regardless of the actual cost incurred in obtaining the tax certificate. Notwithstanding this practice, the Company's January 29, 1999 fee schedule filing effective in Colorado during the period under examination in Adams, Arapahoe, Jefferson, Douglas, and Denver counties contained the following regarding incidental closing charges:

15.	Misc. charges for freight, recording, updating statements, attorney's fees, phone charges, forms and facsimiles	$ cost
16.	D. Courier, overnight, ect	$ cost
17.	E. Tax Certificates	$ cost

18.	F. Bank Charge-wires	$ cost
19.	G. Bank Charge-cahier's check	$ cost
20.	H. Bank Charge-certified check	$ cost
21.	I. Bank Charge-stop payment	$ cost

Fidelity National Title Insurance Company, FIDELITY NATIONAL TITLE INSURANCE COMPANY FEES & RULES GOVERNING ISSUANCE OF TITLE COMPANY COMMITMENTS, POLICIES, AND ENDORSEMENTS IN THE STATE OF COLORADO, §VIII, Article 8.2, § I at page 48 10 (ed. effective 11/29/99).

The practice of charging a flat rate for tax certificates (county-by-county flat rate fees ranged between $13.00 and $25.00) generally resulted in the Company charging excess funds for tax certificates obtained. In forty-nine (49) of these fifty-seven (57) instances the flat fee was charged in derogation of the cited rule. In the remaining eight (8) instances, since the Company failed to file any flat rate for tax certificates with the Colorado Division of Insurance, the monies collected in excess of the actual cost of obtaining the tax certificates resulted in the collection of an unfiled fee and application of an unfiled rate. The fifty-seven (57) errors resulted in overcharges ranging between $3.00 and $15.00 on a per file basis.

Misapplication of Express Fee Charges

In fifty-three (53) of the eighty-one (81) reported files (53% of the sample), the Company collected monies from insureds for express mail and/or courier charges. Furthermore, a review of 100 systematically selected underwriting and escrow files demonstrated that, whenever a closing required an express mailing, the Company's practice was to charge a flat fee for the charges incurred. These flat fees ranged by county from $15.00 to $25.00 per mailing. Notwithstanding this practice, the Company's January 29, 1999 fee schedule filing effective in Colorado during the period under examination in Adams, Arapahoe, Jefferson, Douglas, and Denver counties contained the following regarding incidental closing charges:

15.	Misc. charges for freight, recording, updating statements, attorney's fees, phone charges, forms and facsimiles	$ cost
16.	J. Courier, overnight, ect	$ cost
17.	K. Tax Certificates	$ cost
18.	L. Bank Charge-wires	$ cost
19.	M. Bank Charge-cahier's check	$ cost
20.	N. Bank Charge-certified check	$ cost
21.	O. Bank Charge-stop payment	$ cost

Fidelity National Title Insurance Company, FIDELITY NATIONAL TITLE INSURANCE COMPANY FEES & RULES GOVERNING ISSUANCE OF TITLE COMPANY COMMITMENTS, POLICIES, AND ENDORSEMENTS IN THE STATE OF COLORADO, §VIII, Article 8.2, § I at page 48 10 (ed. effective 11/29/99).

As indicated above, none of the Company's rates on file with the Colorado Division of anticipate or provide for any additional charges or fees over and above the actual costs incurred for any express mailing conducted in association with express delivery charges. Contra, the cited portion of the Company's fee schedule indicated that, in those enumerated counties, the filed charge for an express mailing was the actual cost of the mailing. The company charged excess monies in derogation of the cited filed fee schedule in forty-eight (48) of the fifty-three (53) files reported here. In the remaining five (5) instances the Company charged a flat fee in excess of the actual cost incurred for conducting express mailings, however, the Company did not have a rate filing to support this practice. Since the actual charges incurred in relation to these mailing charges were not documented in any of the files reported here, a range of error in overcharges was not discernable.

Release Fees

In thirty (30) of the eighty-one (81) reported files (30% of the sample), the Company collected monies from insureds for recording releases and/or facilitating the recordation of releases. Further review of 100 systematically selected underwriting and, where applicable, accompanying escrow files demonstrated that, whenever a closing required recordation of a release, the Company's practice was to charge a flat fee for the facilitation of obtaining and recording the release. The Company's flat fee for obtaining and recording such releases generally ranged between $19.00 and $26.00 per release. Notwithstanding this practice, the Company's January 29, 1999 fee schedule filing effective in Colorado during the period under examination in Adams, Arapahoe, Jefferson, Douglas, and Denver counties contained the following regarding incidental closing charges:

15.	Misc. charges for freight, recording, updating statements, attorney's fees, phone charges, forms and facsimiles	$ cost
16.	P. Courier, overnight, ect	$ cost
17.	Q. Tax Certificates	$ cost
18.	R. Bank Charge-wires	$ cost
19.	S. Bank Charge-cahier's check	$ cost

20.	T. Bank Charge-certified check	$ cost
21.	U. Bank Charge-stop payment	$ cost

Fidelity National Title Insurance Company, FIDELITY NATIONAL TITLE INSURANCE COMPANY FEES & RULES GOVERNING ISSUANCE OF TITLE COMPANY COMMITMENTS, POLICIES, AND ENDORSEMENTS IN THE STATE OF COLORADO, §VIII, Article 8.2, § I at page 48 10 (ed. effective 11/29/99).

As indicated above, none of the Company's fee schedules filed with the Colorado Division of anticipate or provide for any additional charges or fees over an above the actual costs incurred for obtaining releases. These overcharges ranged between $1.00 and $26.00.

Deeds of Trust

In ten (10) of the eighty-one (81) files the Company overcharged/undercharged the insured for facilitating and recording a Deed of Trust. In one (1) instance the Company failed to charge the insured for the recording resulting in a $15.00 undercharge. In the remaining nine (9) instances the Company should have, in the absence of a filed rate to the contrary, charged the actual cost of the recording. In these instances, however, the Company charged excess monies to record the respective Deed of Trust. These overcharges ranged between $1.00 and $20.00.[6] Seven (7) of these overcharges were made in derogation of the Metro area fee schedule filing cited in the text above.

Warranty Deeds

In six (6) of the eighty-one (81) files the Company overcharged/undercharged the insured for facilitating and recording the Warranty Deeds. In one (1) instance the Company failed to charge the insured for the recording resulting in a $60.00 undercharge. In the remaining nine (5) instances the Company should have, in the absence of a filed rate to the contrary, charged the actual cost incurred by the Company to record the respective Warranty Deed, however, the Company charged excess monies for the recordings. In these instances the Company overcharged the insured amounts ranging between $1.00 and $5.00.[7] Three (3) of these

[6] Prior to July 1, 1999 the normal fee or actual charge to record a Deed of Trust was $6.00 for the first page and $5.00 for each page thereafter. The $6.00 charge for the first page included a statutory $1.00 central indexing fee. Effective July 1, 1999, the Colorado State Legislature repealed the statutory $1.00 indexing fee for recordings reducing the actual charge for recordings by $1.00. Four (4) of the instances reported here were $1.00 overcharges resulting form the Company's failure to cease charging the repealed indexing fee.

[7] Prior to July 1, 1999 the normal fee or actual charge to record a Warranty Deed was $6.00 for the first page and $5.00 for each page thereafter. The $6.00 charge for the first page included a statutory $1.00 central indexing fee. Effective July 1, 1999, the Colorado State Legislature repealed the statutory $1.00 indexing fee for recordings reducing the actual charge for recordings by $1.00. Two (2) of the instances reported here were $1.00 overcharges resulting form the Company's failure to cease charging the repealed indexing fee.

overcharges were made in derogation of the Metro area fee schedule filing cited in the text above.

Document Preparation

In fourteen (14) of the eighty-one (81) files Company charged document preparation charges, however, the Company's rate filing effective during the period under examination did not support such a charge or fee resulting in fourteen (14) overcharges ranging between $5.00 and $35.00.

Miscellaneous Fees Associated with Closings

Three (3) of the eighty-one (81) reported files (3% of the sample) contained overcharges assessed by the Company and/or its agents for miscellaneous expenses incurred in the course of conducting real estate and/or loan closings. Such expenses included obtaining releases, miscellaneous scrivener and document preparation charges and various recordings. Many of the overcharges resulted from Company agents charging flat rates to defray the costs of such services.

Since neither the Company or its agents had a printed schedule of closing and settlement service fees and charges containing any such flat rate charges, all monies collected in excess of the actual cost of performing or obtaining such goods or services resulted in the collection of excessive service charges. In addition, since such charges were not assessed consistently, the excess charges were unfairly discriminatory for those insureds paying the higher charges. This practice resulting in overcharges of $10.00 charged as cashier's check charge, $15.00 charged as an assignment fee, and $50.00 charged as a disbursement fee. The charges in these files were unfairly discriminatory insomuch as the charges were not routinely made and arbitrarily assessed in these three (3) instances.

OVERCHARGES & MISCALCULATIONS OF FILED CLOSING FEES

Closing Fees

Forty-four (44) of the eighty-one (81) reported files (44% of the sample) contained rating errors[8] in which the Company deviated from the Company's schedule of fees and charges for regularly rendered closing and settlement services, filed with the Colorado Division of Insurance. Specifically, the files contained rating errors in which the Company made charges for basic closing fees that deviated from the Company's filed fee schedule. The Forty-four (44) files contained a total of sixty-three (63) errors resulted in thirty-five (35) overcharges ranging

[8] Many of the forty-four (44) files reported here contained rating errors regarding closing fees for both the real estate and lender closing transaction. Where multiple closing fee errors occurred within a file, the file was only reported as a single error.

between $15.00 and $225.00 and twenty-eight (28) undercharges ranging between $20.00 and $150.00.[9]

Twenty-nine (29) of the forty-four (44) files contained rating errors for charges associated with real estate closings. Of these twenty-nine (29) files, eighteen (18) files contained errors resulting in overcharges ranging between $15.00 and $225.00. Eleven (11) files contained undercharges ranging between $20.00 and $150.00.

Thirty-four (34) of the forty-four (44) files contained rating errors for charges associated with loan closings. Of these forty-four (44) files, seventeen (17) files contained errors resulting in overcharges ranging between $30.00 and $175.00. The remaining seventeen (17) files contained rating errors resulted in undercharges ranging between $20.00 and 120.00.

The initial list of policies issued by the Company in Colorado during the period under examination did not include limited liability title insurance policies issued by the Company during the examination period. Based on this information, the examiners requested the Company to provide a list of limited liability policies issued by the Company from July 1, 1999 to June 30, 2000. The examiners systematically selected 50 limited liability policies from that list for further review. The examiners' findings pertinent to the Company's practice of charging an unfiled flat rate for tax certificates obtained in compliance with §10-11-122, C.R.S. and in conjunction with closings services were as follows:

LIMITED LIABILITY TITLE POLICIES ISSUED
July 1, 1999 through June 30, 2000

Population	Sample Size	Number of Exceptions	Percentage to Sample
460	50	30	60%

An examination of 50 systematically selected underwriting files, representing 11% of all limited liability title policies issued by the Company in Colorado during the period under examination, showed 30 instances (60% of the sample) wherein the Company performed closing services and/or obtained tax certificates for insureds and collected unfiled fees and/or unfiled charges for services rendered in coordination with the closing and/or obtaining said tax certificates.

Tax Certificate Charges

As in the case of other underwriting and escrow files, a review of the 50 underwriting files for the limited liability policies demonstrated that, during the period under examination, the Company charged a flat rate for services rendered in coordination with obtained tax certificates.

[9] The range of error reported here is based on the miscalculation or misapplication of a single closing fee, either real estate or lender. The range does not represent the total monetary error contained in a file with multiple closing fee errors.

The Company failed to file the flat rate tax certificate charge with the Colorado Division of Insurance. In twenty-eight (28) of the thirty (30) reported files (56% of the sample) the Company charged the unfiled flat rate for services rendered in coordination with obtaining a certificate of taxes due resulting in twenty-eight (28) overcharges. The twenty-eight (28) errors resulted in overcharges ranging between $3.00 and $15.00 on a per file basis.

Closing Fees

Two (2) of the thirty (30) reported files (4% of the sample) contained rating errors in which the Company agents deviated from the Company's schedule of fees and charges for regularly rendered closing and settlement services, filed with the Colorado Division of Insurance. Specifically, the files contained rating errors in which Company agents made charges for basic closing fees that deviated from the Company or its agent's filed fee schedule. One file contained rating errors resulting in an overcharge of $15.00 while the other file resulted in an undercharge of $150.00.

Recommendation #11:

Within 30 days the Company should provide documentation demonstrating why it should not be considered in violation of §§ 10-3-1104(1)(f)(II) and 10-4-403, C.R.S., and the filing requirements of 3 CCR 702-3(3-5-1). In the event the Company is unable to provide such documentation, it should be required to demonstrate that it has reviewed its procedures relating to the filing of rates and rating rules and has implemented procedures which will assure future compliance with the filing requirements of the law. Such procedures should include, but not be limited to, completing annual self-audits of agency rating practices.

PERTINENT FACTUAL FINDINGS

Relating to

CLAIMS SETTLEMENT PRACTICES

Issue L: Failure to adopt and/or implement reasonable standards for the prompt investigation of claims.

Section 10-3-1104(1)(h)(II), C.R.S., defines an unfair claims settlement practice as:

> (II) Failing to acknowledge and act reasonably promptly upon communications with respect to claims arising under insurance policies.

Section 10-3-1104(1)(h)(III), C.R.S., defines an unfair claims settlement practice as:

> (III) Failing to adopt and implement reasonable standards for the prompt investigation of claims arising under insurance policies.

Section 10-3-1104(1)(h)(VI) defines an unfair claims settlement practice as:

> (VI) Not attempting in good faith to effectuate prompt, fair, and equitable settlements of claims in which liability has become reasonably clear.

Pursuant to the authority granted by § 10-1-109, C.R.S., Colorado Insurance Regulation 1-1-7 was adopted to assist the commissioner in carrying out market conduct examinations in accordance with Colorado law. Colorado Insurance Regulation 1-1-7 provides in pertinent part:

> C. RECORDS REQUIRED FOR MARKET CONDUCT PURPOSES
>
> 3. Claim files shall be maintained so as to show clearly the inception, handling and disposition of each claim. A claim file shall be retained for the calendar year in which it is closed plus the next two calendar years. . . .
>
> . . .Records required to be retained by this regulation may be maintained in paper, photograph, microprocess, magnetic, mechanical or electronic media, or by any process which accurately reproduces or forms a durable medium for the reproduction of a record. A company shall be in compliance with this section if it can produce the data which was contained on the original document, if there was a paper document, in a form which accurately represents a record of communications between the insured and the company or accurately reflects a transaction or event. Records required to be retained by this regulation shall be readily available upon request by the commissioner or a designee.

OPEN TITLE CLAIMS
July 1, 1999 through June 30, 2000

Population	Sample Size	Number of Exceptions	Percentage to Sample
46	46	21	46%

An examination of 46 systematically selected claim files, representing 100% of all Company title claims open in Colorado during the period under examination, showed, showed 21 exceptions (46% of the sample) wherein the Company failed to adopt and/or implement reasonable standards for the prompt investigation of claims arising under insurance policies.

Many files reviewed contained more than one error, however, to maintain sample integrity, each file was considered as a singular error regardless of the total errors contained in the file. Thus, the exception frequency reported above was 46%, however the forty-six (46) claim files reviewed contained a total of forty-nine (49) errors. As specified by the heading of this issue, these forty-nine (49) errors fell into two broad categories. One category was comprised of errors resulting from the Company's failure to implement its own claim handling procedures. The second category resulted from the Company's failure to adopt certain rules and/or procedures requisite to facilitate the prompt investigation or handling of claims arising under title insurance policies. Specific findings were as follows.

I. FAILURE TO ADOPT REASONABLE STANDARDS FOR PROMPT INVESTIGATION OF CLAIMS

FAILURE TO ADOPT PROCEDURES TO AVOID DELAYS IN INVESTIGATING CLAIMS CAUSED BY ASSIGNING CLAIMS TO OUTSIDE COUNSEL:

Seven (7) of the twenty-one (21) claim files reviewed by the examiners contained claim handling delays and/or documentation problems incurred during periods in which claim files were assigned to outside counsel. In these instances the claims manager/attorney handling the respective claim file retained outside counsel to investigate and review the claim. Various documents contained in these files (i.e. letters, attorney's bills, telephone notations, and facsimile transmissions) demonstrated the Company's claims attorney continued to monitor and/or periodically review each claim until the claim was assigned to outside counsel.

After assignment to outside counsel the file records were comprised of sporadic notations and contained lengthy periods of times in which the files were void of entries evidencing the claims manager/attorney failed to monitor, document or otherwise update or monitor the respective claim file at regular intervals to assure fair, equitable and prompt handling as required by §§10-3-1104(1)(h) et seq., C.R.S. The Company's claims manual did not contain any rules regarding monitoring or updating claim files involving outside counsel or other individuals or entities procured to assist in handling Company claims.

Whenever an insurer routinely delegates claims handling functions, the insurer should adopt and implement procedures for monitoring assigned claims to assure the claim is processing in compliance with Colorado laws. The Company's failure to adopt specific procedures for monitoring, updating, and/or otherwise tracking open claim files combined with the absence of adjuster or file notes and lengthy periods of claim file idleness and/or delays in these files demonstrated noncompliance with §10-3-1104(1)(h)(III).

FAILURE TO ADOPT PROCEDURES TO AVOID CLAIM RESOLUTION DELAYS:

Four (4) of the twenty-one (21) claim files reviewed by the examiners contained claim handling delays and/or documentation problems incurred during periods in which claim files were essentially resolved and marked for closing pending some follow-up action (i.e. obtaining a release or recording a document). In these four (4) instances correspondence with the claimant had properly ceased because the claims were essentially resolved. In each instance the file remained open pending some final action by the Company other than payment. A problem discernable from this practice, however, was that reserved files often remained open and idle for unreasonable periods ranging between 166 and 487 days.

A review of the Company's claim manual effective in Colorado during the period under examination demonstrated that the Company did not have any claims handling procedures designed to eliminate situations like those discussed above wherein claims files remained open and idle for unreasonable periods of time.

FAILING TO ADOPT GENERAL PROCEDURES FOR TRACKING AND UPDATING OPEN CLAIM FILES

Six (6) of the files reported here were files that remained open and idle and/or were void of any file documentation for excessive periods of time. Specifically, a review of the Company's claims manual effective in Colorado during the period under examination demonstrated that the Company failed to adopt procedures regarding updating, and/or otherwise tracking open claim files. The manual merely contained standards for responding to communications, initiating investigations, paying, and/or initiating action to resolve a claim, however the Company's claims manual did not set forth time limitations for periodic review of claim files particularly where the method of resolution was a course of action other than payment.

In the absence of any claims handling standards for periodic review of open claim files where the method of resolution was a course of action other than payment, and in the absence of any other suspense or tickler system, these six (6) files remained open and idle for periods of time ranging between ninety-two (92) days and seven (7) months.

II. FAILURE TO IMPLEMENT COMPANY STANDARDS FOR PROMPT INVESTIGATION OF CLAIMS

FAILING TO IMPLEMENT COMPANY CLAIM HANDLING RULE - OBTAIN POLICY AND/OR COMPLETE AGENT POLICY VERIFICATION CHECKLIST IN COMPLIANCE WITH COMPANY CLAIMS MANUAL

During the period of examination, July 1, 1999 to June 30,2000, The Company's Claims Manual contained the following rule:

> We are required to respond to any 'any communication' from a claimant that reasonable suggests that a response is expected, within 15 days.

MANUAL OF PROCEDURES FOR THE HANDLING OF CALIFORNIA TITLE INSURANCE CLAIMS FOR THE FIDELITY NATIONAL FINANCIAL GROUP OF TITLE INSURERS (ed. 1997), Internal Procedures for the Handling of Title Claims, §4.

In one (1) of the twenty-one (21) reported files the insured's attorney wrote the Company a letter dated January 20, 1998 requesting the Company to reimburse the insured for attorney's fees incurred in an action to vacate a county road located within the insured's property. The Company failed to implement the cited rule and failed to reply to the January 20, 1998 letter within 15 days.

FAILING TO IMPLEMENT COMPANY CLAIM HANDLING RULE – 40 DAY WRITTEN NOTICES REGARDING WHY COVERAGE DECISIONS COULD NOT BE MADE

The Company's claims manual provides in pertinent parts:

> If you cannot, within 40 days after receipt of notice of the claim, "accept or deny the claim" and "accept or deny liability," then you must notify the claimant in writing of the reasons why the determination cannot be made, and you must continue to do so, in writing, every thirty days.

MANUAL OF PROCEDURES FOR THE HANDLING OF CALIFORNIA TITLE INSURANCE CLAIMS FOR THE FIDELITY NATIONAL FINANCIAL GROUP OF TITLE INSURERS (ed. 1997), Standards for Prompt, Fair and Equitable Settlements Applicable To all Insures, §§ 1 & 2.

In eleven (11) of the twenty-one (21) reported files instances the files were not documented to show the Company accepted liability for the claim until periods exceeding 40 days from the dated Company first received notice of the respective claim. In the absence of affirming or denying coverage within 40 days of receipt of notice of a loss the cited provision of the

Company's claims manual requires the Company to provide written notices every thirty days explaining the reasons why the determination could not be made.

The Company failed to comply with either of these standards in handling these eleven (11) claim files in that the Company failed to provided each of these claimants with written notification of the reason or reasons why a determination into coverage could not be in made in accordance with the rule cited above. Furthermore, none of the eleven (11) files reported here were documented to demonstrate compliance with that portion of the cited Company rule requiring the Company to provide the insured with 30 day written updates describing why a coverage decision had not been made.

FAILING TO IMPLEMENT COMPANY RULE – ACKNOWLEDGED CLAIM WITHIN 15 DAYS OF RECEIPT OF NOTICE

During the period under examination, July 1, 1999 to June 30, 2000, the Company's claim manual contained the following standard regarding acknowledgement of receipt of a claim:

> You must acknowledge receipt of a claim notice within 15 days of receipt, either in writing or otherwise (with a dated notation in the file.). . .Notice of claim to an insurance agent is considered imputed to the insurance company. . . .Underwritten Title Companies should not be responding to policy claims, except to state that they are forwarding the claim to the legal department of the underwriter.

MANUAL OF PROCEDURES FOR THE HANDLING OF CALIFORNIA TITLE INSURANCE CLAIMS FOR THE FIDELITY NATIONAL FINANCIAL GROUP OF TITLE INSURERS (ed. 1997), Acknowledging Communications.

In fourteen (14) of the twenty-one (21) reported files the Company failed to acknowledge receipt of a claim within fifteen (15) days of receipt of notice of the claim as required by operation of the cited company rule. Seven (7) of the fourteen files were not documented to show when or if the Company acknowledged receipt of the claim. In the remaining seven (7) instances the Company failed to acknowledged claims in derogation of the cited Company rule for periods ranging between 21 and 126 days.

FAILING TO IMPLEMENT COMPANY RULE – POST COVERAGE DECISION UPDATE RULE

During the period under examination the Company's Claims Manual contained the following rules regarding monitoring claims and prompt, timely review and investigation of claims:

> PAYMENT OR TAKING ACTION TO CORRECT A PROBLEM

> Once liability has determined, it may be the amount of liability is still undetermined without further information, or that, pursuant to the terms of the policy or guarantee, we exercise our option to take action to correct or minimize the 'problem,' you must keep the claimant informed of the status of the claim. Once the amount of liability is determined, if payment is the option we are exercising (as opposed to other action permitted by the policy,) then, pursuant to the regulations and the provisions of our policies and guarantees, payment should be made within thirty days.

MANUAL OF PROCEDURES FOR THE HANDLING OF CALIFORNIA TITLE INSURANCE CLAIMS FOR THE FIDELITY NATIONAL FINANCIAL GROUP OF TITLE INSURERS, Internal Procedures for the Handling of Claims, §8(ed. 1997).

In five (5) of the twenty-one (21) reported claims files the Company accepted liability. In each instance, however, the amount of liability remained undetermined or the Company opted to resolve the respective claim in another manner. In each instance the file remained open and active for periods ranging between six (6) months and one (1) year. Although no loss payments were made during that period for any of the five (5) files reported here, the files were not documented to show the Company kept the insured or, wherever applicable, the insured's reprehensive apprised of the status of the respective claim in compliance with the cited Company rule.

FAILING TO IMPLEMENT COMPANY RULE – ALL REJECTIONS MUST BE IN WRITING

The Company's claims manual provides in pertinent parts:

> 1. ALL DENIALS OR REJECTIONS MUST BE IN WRITING. . .
>
> . . .If you cannot, within 40 days after receipt of notice of the claim, "accept or deny the claim" and "accept or deny liability," then you must notify the claimant in writing of the reasons why the determination cannot be made, and you must continue to do so, in writing, every thirty days.

MANUAL OF PROCEDURES FOR THE HANDLING OF CALIFORNIA TITLE INSURANCE CLAIMS FOR THE FIDELITY NATIONAL FINANCIAL GROUP OF TITLE INSURERS (ed. 1997), Standards for Prompt, Fair and Equitable Settlements Applicable To all Insures, §§ 1 & 2.

In one (1) of the twenty-one reported files the Company failed to comply with the requirements of the Company's Claims Manual when denying coverage. Specifically, in this instance a claim was denied, however, the initial denial was not provided in writing in compliance with the cited Company claims handling procedure.

Recommendation #12:

Within 30 days, the Company should provide documentation demonstrating why it should not be considered in violation of § 10-3-1104(1)(h)(III), C.R.S. In the event the Company is unable to show such proof, it should provide evidence that it has reviewed all Company rules, manuals and procedures relating to the investigation and handling of claims and that it has adopted reasonable procedures to assure the Division of Insurance that all claims will be acknowledged, handled, adjusted, and/or investigated in accordance with Colorado Insurance Laws.

The Company should also be required to review its Claims Manual and currents claims handling procedures and amend, reform, and/or update either the manual or procedures so that the Company's Claims Manual is an accurate reflection of current Company claims handling procedures. Any update or amendments of the manual should incorporate and address changes in the Company's claims operation systems, software, and programs pertinent to processing, handling, and documenting claims. Highlighted corrected sections of the Company's Claims Manual should be submitted to the Market Conduct Section of the Colorado Division of Insurance

Issue M: Failure to produce and/ or maintain adequate claims records for market conduct review.

Pursuant to the authority granted by § 10-1-109, C.R.S., Colorado Insurance Regulation 1-1-7 was adopted to assist the commissioner in carrying out market conduct examinations in accordance with Colorado law. Colorado Insurance Regulation 1-1-7 provides in pertinent parts:

D. RECORDS REQUIRED FOR MARKET CONDUCT PURPOSES

2. Every insurer/carrier or related entity licensed to do business in this state shall maintain its books, records, documents and other business records so that the insurer's/carrier's or related entity's claims, rating, underwriting, marketing, complaint, and producer licensing records are readily available to the commissioner. Unless otherwise stated within this regulation, records shall be maintained for the current calendar year plus two calendar years.

3. A policy record shall be maintained for each policy issued in this state. Policy records shall be maintained for the current policy term, plus two calendar years, unless otherwise contractually required to be retained for a longer period. Provided, however, documents from policy records no longer required to be maintained under this regulation, which are used to rate or underwrite a current policy, must be maintained in the current policy records. Policy records shall be maintained as to show clearly the policy term, basis for rating and, if terminated, return premium amounts, if any. Policy records need not be segregated from the policy records of other states so long as they are readily available to the commissioner as required under this rule. A separate copy need not be maintained in the individual policy records, provided that any data relating to that policy can be retrieved. Policy records shall include:

a. The application for each policy, if any;

e. Declaration pages, endorsements, riders, termination notices, guidelines or manuals associated with or used for the rating or underwriting of the policy. Binder(s) shall be retained if a policy was not issued; and

f. Other information necessary for reconstruction of the rating and underwriting of the policy.

4. Claim files shall be maintained so as to show clearly the inception, handling and disposition of each claim. A claim file shall be retained for the calendar year in which it is closed plus the next two calendar years.

4. Records relating to the insurer's/carrier's or related entity's compliance with this state's producer licensing requirements shall be maintained, which shall include the licensing records of each agency and producer associated with the insurer or related entity. Licensing records shall be maintained so as to show clearly the dates of the appointment and termination of each producer.

5. The complaint records required to be maintained under Section 10-3-1104, C.R.S. and Regulation 6-2-1.

Records required to be retained by this regulation may be maintained in paper, photograph, microprocess, magnetic, mechanical or electronic media, or by any process which accurately reproduces or forms a durable medium for the reproduction of a record. A company shall be in compliance with this section if it can produce the data which was contained on the original document, if there was a paper document, in a form which accurately represents a record of communications between the insured and the company or accurately reflects a transaction or event. Records required to be retained by this regulation shall be readily available upon request by the commissioner or a designee. Failure to produce and provide a record within a reasonable time frame shall be deemed a violation of this regulation, unless the insurer or related entity can demonstrate that there is a reasonable justification for that delay.

OPEN TITLE CLAIMS
July 1, 1999 through June 30, 2000

Population	Sample Size	Number of Exceptions	Percentage to Sample
46	46	7	15%

An examination of 46 systematically selected claim files, representing 100% of all title claims submitted to the Company in Colorado during the period under examination, showed seven (7) exceptions (15% of the sample) wherein the Company failed to adequately document claim files sufficient to allow the examiners to determine compliance with Colorado law. Specifically, in these seven (7) instances Company claim files reviewed were not adequately documented to clearly show the inception, handling and/or disposition of the respective claim.

Recommendation #13:

Within 30 days, the Company should provide written documentation demonstrating why it should not be considered in violation of 3 CCR 702-1(1-1-7), as authorized by §10-1-109, C.R.S. In the event the Company is unable to provide such documentation, it should be required to provide evidence demonstrating the Company has reviewed its procedures pertaining to record maintenance in the context of claims handling.

Once the Company has reviewed those procedures, the Company should be required to demonstrate it has amended its claims manual and implemented procedures which will assure claim files will be maintained so as to clearly show the inception, handling and disposition of each claim and generally assure future compliance with the requirements of the law.

Issue N: Failure to include an anti-fraud statement in policy or application or claim forms.

Section 10-l-127(7)(a), C.R.S. provides:

> (7) (a) On and after January 1, 1997, each insurance company shall provide on all printed applications for insurance, or on all insurance policies, or on all claim forms provided and required by an insurance company, or required by law, whether printed or electronically transmitted, a statement, in conspicuous nature, permanently affixed to the application, insurance policy, or claim form substantially the same as the following:
>
> **"It is unlawful to knowingly provide false, incomplete, or misleading facts or information to an insurance company for the purpose of defrauding or attempting to defraud the company. Penalties may include imprisonment, fines, denial of insurance, and civil damages. Any insurance company or agent of an insurance company who knowingly provides false, incomplete, or misleading facts or information to a policyholder or claimant for the purpose of defrauding or attempting to defraud the policyholder or claimant with regard to a settlement or award payable from insurance proceeds shall be reported to the Colorado division of insurance within the department of regulatory agencies.**

A review of forms produced by the Company during the course of the market conduct examination demonstrated that the Company was not in compliance with §10-l-127(7)(a), C.R.S.. Specifically, a review of all Company policy forms used in Colorado during the period under examination demonstrated that the Company failed to include the cited antifraud related statutory notice, or any form thereof, on any Company policy forms where such notice was required.

Recommendation #14:

Within 30 days, the Company should demonstrate why it should not be considered in violation Section 10-1-127(7)(a),C.R.S. In the event the Company is unable to provide such documentation, it should be required to provide evidence that it has adopted and implemented a complying Colorado antifraud plan. The Company should submit a copy of the newly adopted antifraud plan to the Market Conduct Section of the Colorado Division of Insurance. The copy of the antifraud plan should be accompanied by a certification signed by an officer of the Company, made subject to the provisions of §10-1-204(5), C.R.S., asserting that, to the best of that officers knowledge, the antifraud plan submitted complies with the requirements of Colorado law.

PERTINENT FACTUAL FINDINGS

Relating to

FINANCIAL REPORTING

Issue O: Failure to file a Colorado Uniform Financial Reporting Plan and/or failure to submit an annual filing of sufficient financial data to justify Company rates.

Section 10-4-404, C.R.S. provides in part:

> (1) The commissioner shall promulgate rules and regulations which shall require each insurer to record and report its loss and expense experience and such other data, including reserves, as may be necessary to determine whether rates comply with the standards set forth in section 10-4-403. Every insurer or rating organization shall provide such information and in such form as the commissioner may require. No insurer shall be required to record or report its loss or expense experience on a classification basis that is inconsistent with the rating system used by it. The commissioner may designate one or more rating organizations or advisory organizations to assist him in gathering and in compiling such experience and data. No insurer shall be required to record or report its experience to a rating organization unless it is a member of such organization.

Colorado Insurance Regulation 3 CCR 702-3(3-5-1(VII)), adopted in part to the authority granted under §10-4-404, C.R.S. provides:

> K. Each title entity on an annual basis shall provide to the Commissioner of Insurance sufficient financial data (and statistical data if requested by the Commissioner) for the Commissioner to determine if said title entities' rates as filed in the title entities' schedule of rates are inadequate, excessive, or unfairly discriminatory in accordance with Part 4 of Article 4 of Title 10, C.R.S.
>
> Each title entity shall utilize the income, expense and balance sheet forms, standard worksheets and instructions contained in the attachments labeled "Colorado Uniform Financial Reporting Plan" and "Colorado Agent's Income and Expense Report" designated as attachments A & B and incorporated herein by reference. Reproduction by insurers is authorized, as supplies will not be provided by the Colorado Division of Insurance.

3 CCR 702-3(3-5-1) requires all title insurers authorized to provide coverage in Colorado to annually file a "Colorado Uniform Financial Reporting Plan" in a format described and appended to the regulation as "Attachment A".

In addition, the regulation requires all title insurers to file sufficient financial data and, upon request, statistical data to justify the title insurers rates and otherwise assure the rates used by the Company comply with the requirements of §10-4-403 et. Seq., C.R.S., and are not excessive, inadequate, or unfairly discriminatory.

A review of the Company's 1999[10] financial statement and related documents and filings demonstrated that the Company failed to file a Colorado Uniform Financial Reporting Plan [3 CCR 702-3 (3-5-1) attachment A] as required by the regulation. In addition, the Company failed to file sufficient financial data to allow the Division to determine whether rates used by the company were excessive, inadequate, or unfairly discriminatory.

Recommendation #15:

Within 30 days, the Company should demonstrate why it should not be considered in violation of the financial data filing requirements established under 3 CCR 702-3(3-5-1(VII)(K)). In the event the Company is unable to provide such documentation, it should be required to provide evidence that it has amended its annual filing procedures so that those procedures anticipate filing of the Colorado Uniform Financial Reporting Plan (Schedule A). The Company should also be required to provide written assurances that it will annually file sufficient financial data to allow the Commissioner to determine whether the insurers rates are inadequate, excessive, or unfairly discriminatory and otherwise assure future compliance with Colorado financial reporting and filing laws.

[10] Although the period under examination included the first two quarters of the calendar year 1999, the examiners restricted their review of the Company's financial filings to 1999. Restricting review to 1999 was mandated by the fact that the annual filing referenced in the text would not have necessarily been prepared or due midway through the 1999 calendar year. The examiners, however, did conduct a review the Company's quarterly Form 9 Financial Statements prepared during the first two quarters of 1999.

SUMMARY OF RECOMMENDATIONS

for

EXAMINATION REPORT ON
FIDELITY NATIONAL TITLE INSURANCE COMPANY

RECOMMENDATION NUMBER	PAGE NUMBER	TOPIC
1	12	**Issue A:** Failure to maintain minimum standards in a record of written complaints..
2	15	**Issue B:** Failure to provide written notification to prospective insureds of the Company's general requirements for the deletion of the standard exception or exclusion to coverage related to unfiled mechanic's or materialman's liens and/or the availability of mandatory GAP coverage.
3	18	**Issue C:** Misrepresenting the benefits, advantages, conditions or terms of insurance policies by omitting applicable endorsements.
4	20	**Issue D:** Failure to obtain written closing instructions from all necessary parties when providing closing and/or settlement services for Colorado consumers.
5	24	**Issue E:** Failure to follow Company underwriting procedures and/or guidelines and/or discriminatory underwriting practices.
6	26	**Issue F:** Issuing title insurance policies without obtaining a certificate of taxes due.
7	30	**Issue G:** Using a name or title of an insurance policy or class of insurance that misrepresents the true nature thereof and/or making, issuing, and/or circulating an estimate, circular, statement and or sales presentation which misrepresents the benefits, advantages, conditions, and/or terms of title insurance policies.
8	44	**Issue H:** Failure to provide adequate financial and statistical data of past and prospective loss and expense experience to justify certain title insurance premium rates.

SUMMARY OF RECOMMENDATIONS

for

EXAMINATION REPORT ON
FIDELITY NATIONAL TITLE INSURANCE COMPANY

RECOMMENDATION NUMBER	PAGE NUMBER	TOPIC
9	48	**Issue I:** Using rates and/or rating rules not on file with the Colorado Division of Insurance and/or misapplication of filed rates.
10	51	**Issue J:** Failure to maintain adequate policy records and/or other information necessary for reconstruction of the rating and/or underwriting of title policies issued by the Company.
11	61	**Issue K:** Using closing and settlement service fees and charges not on file with the Colorado Division of Insurance.
12	68	**Issue L:** Failure to adopt and/or implement reasonable standards for the prompt investigation of claims.
13	72	**Issue M:** Failure to produce and/ or maintain adequate claims records for market conduct review.
14	73	**Issue N:** Failure to adopt and/or implement a complying anti-fraud plan.
15	76	**Issue O:** Failure to file a Colorado Uniform Financial Reporting Plan and/or failure to submit an annual filing of sufficient financial data to justify Company rates.

EXAMINATION REPORT SUBMISSION

Independent Market Conduct Examiners
Duane G. Rogers, Esq.,
&
J. Reuben Hamlin, Esq.,
participated in this examination and in the preparation of this report.